



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

### Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

### About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>













**INDEX-DIGEST**  
**TO THE**  
**MONOGRAPHIC NOTES**  
**IN THE**  
**AMERICAN STATE REPORTS**  
**VOLUMES 1 TO 140**

**BY**  
**EDMUND S. GREEN**

---

**AN ENTIRELY NEW AND COMPLETE INDEX**  
**TO THE NOTES**

---

**SAN FRANCISCO**  
**BANCROFT-WHITNEY COMPANY**  
**1912**

**COPYRIGHT, 1912**  
**BY**  
**BANCROFT-WHITNEY COMPANY**

**186203**

Y9A96LJ 090786A 3

**SAN FRANCISCO**  
**THE FILMER BROTHERS ELECTROTYPE COMPANY**  
**TYPOGRAPHERS AND STEREOTYPERS**

# LIST OF TITLES

IN

## INDEX TO NOTES

CONTAINED IN

### VOLUMES 1 TO 140, INCLUSIVE,

OF THE

# AMERICAN STATE REPORTS.

	Page		Page
Abandoned Wife.....	1	Actors.....	7
Abandonment.....	1	Actual Bias.....	7
Abatement.....	1	Actual Breaking.....	7
Abatement and Revival.....	2	Actual Damages.....	7
Abbreviations.....	2	Actual Notice.....	7
Abettors.....	2	Actual Possession.....	7
Ability.....	2	Addition.....	7
Abnegation.....	2	Additional Servitudes.....	7
Abode.....	2	Additions.....	8
Abolition.....	2	Addressee.....	8
Abortion.....	2	Ademption of Legacies.....	8
Absconding Debtors.....	2	Adequate Remedy at Law.....	8
Absence.....	2	Adjoiners.....	8
Absence of Judge.....	2	Adjoining Land Owners.....	8
Absence of Malice.....	2	Adjournment.....	9
Absence of Witness.....	2	Administrator De Bonis Non.....	9
Absentees.....	3	Administrator's Sales.....	9
Absolute Deed.....	3	Administrator With Will Annexed.....	9
Absolute Guaranty.....	3	Admiralty.....	9
Absolute Writ.....	3	Adoption.....	9
Abstracts of Title.....	3	Adulteration.....	9
Abuse of Franchise.....	3	Adultery.....	9
Abutting Owners.....	3	Advanced Bids.....	10
Academies.....	4	Advancement.....	10
Accelerating Flow.....	4	Advances.....	10
Acceptance.....	4	Adverse Interest.....	10
Acceptance of Benefit.....	4	Adverse Possession.....	10
Accession.....	4	Advertisement.....	12
Accessories.....	4	Advertising.....	12
Accident.....	4	Advice of Counsel.....	12
Accidental Alteration.....	4	Advocates.....	12
Accident Insurance.....	4	Affection.....	12
Accommodation Paper.....	4	Affidavits.....	12
Accommodations.....	4	Affiliations.....	12
Accomplices.....	4	Affinity.....	12
Accord and Satisfaction.....	4	After-acquired Property.....	12
Account Books.....	5	After-acquired Title.....	12
Accounting.....	5	After-born Children.....	12
Accounts.....	5	After Demand.....	12
Account Stated.....	5	Age.....	12
Accretions.....	5	Agency.....	12
Accrual of Cause.....	5	Agreement of Jury.....	12
Accumulations.....	5	Agreements.....	12
Acknowledgment.....	6	Agricultural Implements.....	12
Acquiescence.....	6	Aid Societies.....	12
Action.....	6	Air.....	12
Actional Imputations.....	7	Alcohol.....	12
Act of God.....	7	Aldermen.....	12

	Page		Page
Alienation.....	12	Assuming Facts.....	23
Alienation of Affections.....	12	Assumpsit.....	22
Aliens.....	12	Assumption of Risk.....	22
Alimony.....	13	Assurance.....	22
Allonge.....	13	Attachment.....	22
Allowance.....	13	Attempt.....	23
Alluvion.....	13	Attestation.....	23
Almanac.....	13	Attesting Witness.....	23
Alteration of Instruments.....	13	Attorney and Client.....	23
Alternative Writ.....	14	Attorney General.....	26
Amalgamation.....	14	Attorney in Fact.....	26
Ambassadors and Consuls.....	14	Attorneys' Fees.....	26
Ambiguities.....	14	Attornment.....	26
Amendment.....	14	Auctions and Auctioneers.....	26
Amotion.....	14	Audita Querela.....	27
Amount in Controversy.....	14	Authentication.....	27
Amusements.....	14	Authority.....	27
Ancestors.....	14	Automobiles.....	27
Anchor.....	14	Autrefois Attaint.....	27
Ancient Boundaries.....	14	Aversion to Kin.....	27
Ancient Deeds.....	14	Avoidance.....	27
Animals.....	14	Avulsion.....	27
Annoyances.....	15	Awakening Passengers.....	27
Annulment.....	15	Award.....	27
Another Action Pending.....	15		
Answer.....	15	Babies.....	28
Antecedent Debts.....	15	Backgammon.....	28
Antenuptial Agreements.....	15	Bad Reputation.....	23
Antenuptial Settlements.....	16	Bagatelle.....	28
Anticipated Controversy.....	16	Baggage.....	28
Anticipated Injury.....	16	Bail.....	28
Anticipation of Death.....	16	Bailment.....	28
Anti-polygamy Law.....	16	Bakers.....	28
Anti-trust Laws.....	16	Balances.....	28
Apiary.....	16	Balloting Machines.....	28
Apothecaries.....	16	Ballots.....	28
Apparel.....	16	Bank Check.....	28
Apparent Authority.....	16	Bankruptcy.....	28
Appeal and Error.....	16	Banks and Banking.....	23
Appeal Bonds.....	17	Bar.....	32
Appearance.....	17	Barbed Wire.....	32
Applause.....	18	Barbers.....	32
Appliances.....	18	Barbary.....	32
Application.....	18	Barrel-house.....	32
Appointment.....	18	Barrenness.....	32
Apportionment.....	18	Bastards.....	32
Apprenticeship.....	18	Battery.....	32
Appurtenances.....	18	Bawdy-house.....	32
Appurtenant Easement.....	18	Beach-combing.....	32
Arbitrary Tests.....	18	Bearer Paper.....	32
Arbitrary Words.....	18	Bearing Arms.....	32
Arbitration and Award.....	18	Bedding.....	32
Architect.....	18	Bedding Stock-cars.....	32
Argument of Counsel.....	18	Beer.....	32
Arms.....	18	Bees.....	32
Army and Navy.....	18	Begging.....	32
Array.....	19	Belief.....	33
Arrears.....	19	Beneficial Associations.....	33
Arrest.....	19	Beneficiaries.....	34
Arson.....	19	Benefit of Another.....	34
Art.....	20	Bequests.....	34
Articles of Incorporation.....	20	Bestiality.....	34
Asportation.....	20	Betterments.....	34
Assault and Battery.....	20	Betting.....	34
Assay.....	20	Bias.....	34
Assessment.....	20	Bicycle Paths.....	34
Assessment Work.....	20	Bicycles.....	34
Assets.....	20	Bidders.....	34
Assignments.....	20	Bigamy.....	34
Assignments for Benefit of Creditors.....	21	Billboards.....	35
Assistance, Writ of.....	21	Billiards.....	35
Assisting Passengers.....	21	Bill in Equity.....	35
Associations.....	21	Bill of Exceptions.....	35
Assumed Names.....	22	Bill of Exchange.....	35

# LIST OF TITLES IN INDEX TO NOTES.

v

	Page		Page
Bill of Interpleader.....	35	Calls in Boundaries.....	44
Bill of Lading.....	35	Canceling Will.....	45
Bill of Peace.....	35	Cancellation.....	44
Bill of Review.....	35	Cancellation of Instruments.....	44
Bills and Notes.....	35	Candidates.....	45
Birds.....	38	Canvass of Votes.....	45
Birth of Issue.....	38	Capacity.....	45
Blacklisting.....	38	Capital Stock.....	45
Blackmail.....	38	Captain.....	45
Blank Spaces.....	38	Card Games.....	45
Blasting.....	38	Cards.....	45
Blind Lodes.....	38	Care.....	45
Blind Persons.....	38	Car Inspector.....	45
Blood Relations.....	38	Carnivals.....	45
Blue Stone.....	38	Car-repairers.....	45
Boarders.....	38	Carriages.....	45
Boarding-house.....	38	Carriers.....	45
Board of Trade.....	38	Carrying Away.....	54
Boards.....	38	Cars.....	54
Bona Fide Holders.....	38	Car Seats.....	54
Bona Fide Purchaser.....	38	Cartons.....	54
Bona Fides.....	38	Car Tracks.....	54
Bond for Title.....	38	Casual Connection.....	54
Bonds.....	38	Casualty Insurance.....	54
Bonis Non.....	39	Catching Fish.....	54
Book Accounts.....	39	Caterers.....	54
Bookmaking.....	39	Cattle.....	54
Books.....	39	Cattle-guards.....	54
Borrowing.....	39	Causa Mortis.....	55
Bote.....	39	Caveat Emptor.....	55
Boundaries.....	39	Cemeteries.....	55
Bounties.....	40	Certainty.....	55
Bowling.....	40	Certificates.....	55
Bowling-alley.....	40	Certified Checks.....	55
Boycott.....	40	Certiorari.....	55
Breach of Contract.....	40	Challenge.....	55
Breach of Covenant.....	40	Champerly and Maintenance.....	55
Breach of Marriage Promise.....	40	Chance.....	55
Breach of the Peace.....	41	Chancery Guardians.....	55
Breach of Trust.....	41	Chance Verdict.....	55
Breaking.....	41	Change of Beneficiary.....	55
Bribery.....	41	Change of Domicile.....	55
Bridge-builders.....	41	Change of Grade.....	55
Bridges.....	41	Change of Venue.....	55
Brokers.....	41	Character.....	55
Brothels.....	42	Charges.....	56
Buggies.....	42	Charities.....	56
Bugs.....	42	Charter.....	56
Building and Loan Associations.....	42	Chattel Mortgages.....	56
Building Contracts.....	42	Chattels.....	58
Building Material.....	42	Chauffeurs.....	58
Building Regulations.....	42	Cheating.....	58
Building Restrictions.....	42	Checks.....	58
Buildings.....	42	Chemists.....	58
Bulk Sales.....	42	Chickens.....	58
Bunco Games.....	42	Chief Engineer.....	58
Burden of Proof.....	42	Children.....	59
Burglary.....	42	Child Witness.....	59
Burial.....	43	Chilling Competition.....	59
Burning.....	43	Chimneys.....	59
Burning Will.....	43	Chips.....	59
Business.....	43	Chivalry Guardians.....	59
Buyer Beware.....	44	Choice of Remedies.....	59
Buyer's Lien.....	44	Choses in Action.....	59
By-bidding.....	44	Christian Names.....	59
By-laws.....	44	Christian Science.....	59
		Chuckaluck.....	59
Cable.....	44	Churches.....	59
Cable Cars.....	44	Cigarettes.....	59
Calamity.....	44	Circumstantial Evidence.....	59
Calling Election.....	44	Circus Trains.....	59
Calling Stations.....	44	Citation.....	59
Calls.....	44	Cities.....	59

	Page		Page
Citizens.....	59	Compensation.....	63
Citizenship.....	59	Competency.....	63
City Clerk.....	59	Competition.....	63
City Council.....	59	Complete Performance.....	63
Civil Actions.....	59	Complete Relief.....	63
Civil Death.....	59	Compliance with Statute.....	63
Civil Rights.....	59	Composition with Creditors.....	63
Civil Service Laws.....	60	Compound Interest.....	63
Claim and Delivery.....	60	Compromise and Settlement.....	63
Claimants.....	60	Compulsory Partition.....	63
Claim of Title.....	60	Compulsory Vaccination.....	63
Claims.....	60	Computation of Time.....	63
Clairvoyants.....	60	Concealed Weapons.....	63
Class.....	60	Concealing Crime.....	63
Class Legislation.....	60	Concealment.....	64
Clerical Errors.....	60	Conclusiveness.....	64
Clerks of Court.....	60	Concurrent Jurisdiction.....	64
Clients.....	60	Concurrent Negligence.....	64
Closed Season.....	60	Concurrent Remedies.....	64
Clothes.....	60	Conditional Delivery.....	64
Cloud on Title.....	60	Conditional Guaranty.....	64
Clubs.....	60	Conditional Pardon.....	64
Coal.....	60	Conditional Sale.....	64
Coal-holes.....	60	Conditions.....	64
Cockfights.....	60	Conditions Precedent.....	64
Code Amendments.....	60	Condonation.....	64
Code Pleading.....	60	Conduct of Counsel.....	64
Codicil.....	61	Conduct of Jury.....	64
Coercing Verdict.....	61	Conductors.....	64
Coercion.....	61	Conduits.....	64
Coexecutors and Coadministrators.....	61	Confession of Judgment.....	64
Cohabitation.....	61	Confessions.....	64
Cold Storage.....	61	Confidence Games.....	64
Collateral Attack.....	61	Confidence Men.....	64
Collateral Facts.....	61	Confirmation.....	64
Collateral Inheritance Tax.....	61	Conflicting Jurisdiction.....	64
Collateral Securities.....	61	Conflicting Surveys.....	64
Collections.....	61	Conflict of Laws.....	64
Collectors.....	61	Confronting Witnesses.....	64
Collision.....	61	Confusion of Goods.....	65
Collusion.....	61	Congress.....	65
Colored Labels.....	61	Congressmen.....	65
Colored Persons.....	61	Connecting Carriers.....	65
Color of Office.....	61	Connivance.....	65
Color of Title.....	62	Conscientious Scruples.....	65
Combinations.....	62	Consent.....	65
Combustibles.....	62	Conservation.....	65
Comitatus.....	62	Consideration.....	65
Comity.....	62	Consignments.....	65
Commencement.....	62	Consolidation.....	65
Commerce.....	62	Conspiracy.....	65
Commercial Agencies.....	62	Constables.....	67
Commercial Paper.....	62	Constant Employment.....	67
Commercial Travelers.....	62	Constituent Corporations.....	67
Commingled Goods.....	62	Constitutional Law.....	67
Commission.....	62	Construction.....	70
Commissioners.....	62	Constructive Breaking.....	70
Commission Merchants.....	62	Constructive Notice.....	70
Common Carriers.....	62	Constructive Service.....	70
Common Counts.....	62	Constructive Trust.....	70
Common Disaster.....	62	Contagious Diseases.....	70
Common Law.....	63	Contempt.....	70
Common-law Liens.....	63	Contests.....	71
Common-law Marriage.....	63	Contiguous Lands.....	71
Common Source.....	63	Contingencies.....	71
Common Stock.....	63	Contingent Estates.....	71
Communicating Disease.....	63	Contingent Fees.....	71
Community of Interest.....	63	Contingent Legacies.....	71
Community Property.....	63	Contingent Statute.....	71
Companies.....	63	Continuance.....	71
Comparative Negligence.....	63	Continuing Guaranty.....	71
Compelling Testimony.....	63	Continuous Nuisance.....	71



# LIST OF TITLES IN INDEX TO NOTES.

vii

	Page		Page
Continuous Offenses.....	71	Dead Animals.....	109
Continuous Trespasses.....	71	Dead Bodies.....	109
Contractors.....	76	Dead Debts.....	109
Contracts.....	71	Deadly Weapons.....	109
Contradictions.....	76	Death.....	109
Contribution.....	76	De Bonis Non.....	111
Contributory Negligence.....	77	Debris.....	111
Control.....	77	Debtor.....	111
Conventional Subrogation.....	77	Debts.....	111
Conversation.....	77	Deceased Witness.....	111
Conversion.....	77	Decedents.....	111
Convicts.....	77	Decisions.....	111
Co-obligors.....	77	Declarations.....	111
Cooling Time.....	77	Decoy.....	111
Copying Records.....	77	Decoyed Persons.....	111
Coram Nobis.....	77	Decoy Letter.....	111
Corn Crib.....	77	Dedication.....	111
Coroner's Inquest.....	77	Deeds.....	111
Corporations.....	77	De Facto Corporations.....	114
Corpses.....	90	De Facto Officers.....	115
Corpus Delicti.....	90	Default.....	115
Correction.....	90	Default Judgment.....	115
Corroboration.....	90	Defective Incorporation.....	115
Coservants.....	90	Defective Mortgage.....	115
Costs.....	90	Defective Record.....	115
Cosureties.....	91	Defendants.....	115
Cotenancy.....	91	Defense of Another.....	115
Cotton.....	91	Defenses.....	115
Cotton-house.....	91	Deficiency of Assets.....	115
Counsel.....	91	Definiteness.....	115
Counsel Fees.....	91	Defrauding Creditors.....	115
Counterclaims.....	91	Degrees of Crime.....	115
Countermand.....	91	Degrees of Kindred.....	115
Counties.....	91	Delay.....	115
Counting Votes.....	92	Delaying Creditors.....	115
Course.....	92	Delegation of Authority.....	115
Course and Distance.....	92	Deliberations of Jury.....	115
Court Rules.....	92	Delivery.....	115
Courts.....	92	Delusions.....	115
Covenants.....	93	Demand.....	115
Crackloo.....	94	Demises.....	116
Crap Game.....	94	Demonstrative Bequests.....	116
Credibility of Witness.....	94	Demurrage.....	116
Creditors.....	94	Demurrer.....	116
Creditors' Suits.....	94	Denials.....	116
Credit Ratings.....	95	Dentists.....	116
Credits.....	95	Dependent and Independent Clauses.....	116
Criminal Contempt.....	95	Deportation.....	116
Criminal Law.....	95	Depositories.....	116
Crops.....	105	Depositions.....	116
Cross-examination.....	105	Deposits in Banks.....	116
Crossing Signals.....	105	Depots.....	116
Cross-lodes.....	105	Deputy Officers.....	116
Cruel and Unusual Punishment.....	105	Derelict.....	116
Cruelty.....	105	Descent.....	116
Cruelty to Animals.....	105	Description.....	117
Currents of Electricity.....	106	Descriptive Words.....	117
Curtilage.....	107	Desertion.....	117
Custody of Children.....	107	Designation of Beneficiaries.....	117
Custody of Law.....	107	De Son Tort.....	117
Customs and Usages.....	107	Destroyed Building.....	117
Cutting Trees.....	107	Destroyed Will.....	117
Cy Pres.....	107	Destroying Will.....	117
		Destruction of Leased Building.....	117
		Destruction of Property.....	117
Damages.....	107	Detainer.....	117
Dams.....	109	Detention.....	117
Dangerous Articles.....	109	Detinue.....	117
Dangerous Premises.....	109	Deviation.....	118
Dangerous Weapons.....	109	Devices.....	118
Danger Signals.....	109	Devises.....	118
Danger to Life.....	109	Diagnosis.....	118
Date.....	109	Dice.....	118
Day.....	109	Diligence.....	118

	Page		Page
Diminishing Flow.....	118	Drunkenness.....	124
Directors.....	118	Duces Tecum.....	124
Disabilities.....	118	Ducks.....	124
Disaffirmance.....	118	Due Care.....	124
Disaster.....	118	Due Process of Law.....	124
Disbarment of Attorneys.....	118	Dunning Letters.....	124
Discharge.....	118	Duplicate Wills.....	124
Discharge of Jury.....	118	Duress.....	124
Discharging Passengers.....	118	Dwelling.....	124
Disclaimer.....	118	Dying Declarations.....	124
Disclosure.....	118	Dynamite.....	124
Discontinuance.....	118		
Discontinuing Business.....	118	Earnings.....	125
Discount.....	118	Earthquake Clause.....	125
Discovery.....	118	Easements.....	125
Discovery Shaft.....	119	Eccentricities.....	125
Discretionary Duties.....	119	Education.....	125
Discretion of Court.....	119	Eight-hour Law.....	125
Discrimination.....	119	Ejection.....	126
Disease.....	119	Ejectment.....	126
Diseased Animals.....	119	Election of Remedies.....	126
Disgrace.....	119	Election of Widow.....	127
Dishonor.....	119	Elections.....	127
Disinterment.....	119	Electricity.....	128
Dismissal and Nonsuit.....	119	Elevated Railroads.....	128
Disorderly House.....	119	Elevators.....	128
Dispatcher.....	119	Emancipation.....	128
Dispatches.....	119	Embankments.....	129
Dispute.....	119	Embezzlement.....	129
Disqualification.....	119	Emergencies.....	129
Dissolution.....	119	Eminent Domain.....	129
Distance.....	119	Employers.....	131
Distillers.....	119	Employer's Liability.....	131
Distilling Products.....	119	Enactment of Statutes.....	131
Distinguishing Marks.....	119	Encroachments.....	131
Distraining Cattle.....	120	Encumbrances.....	132
Distress for Rent.....	120	End Lines.....	132
Distribution.....	120	Engineer.....	132
District of Columbia.....	120	Engine-house.....	132
District Schools.....	120	Engines.....	132
Ditches.....	120	En Masse.....	132
Diversion.....	120	Enrolled Bill.....	132
Divided Court.....	120	Enticing Spouse.....	132
Dividends.....	120	Entire Contracts.....	132
Dividing Walls.....	120	Entire Judgments.....	132
Divine Healing.....	120	Entire Jurisdiction.....	132
Divining Rods.....	120	Entrapment.....	132
Divisible Contracts.....	120	Entries.....	132
Division of Loss.....	120	Entry.....	132
Division of Property.....	120	Envelopes.....	132
Divorce.....	120	Equality.....	132
Docket.....	123	Equestrians.....	132
Docketing Judgment.....	123	Equitable Conversion.....	132
Docks.....	123	Equitable Estoppel.....	132
Doctors.....	123	Equitable Liens.....	132
Documentary Evidence.....	123	Equitable Mortgages.....	132
Document Stamps.....	123	Equity.....	132
Dogs.....	123	Equity of Redemption.....	134
Domestic Animals.....	123	Erasures.....	134
Domestic Obligations.....	123	Erosion.....	134
Domicile.....	123	Erroneous Decision.....	134
Dormant Judgment.....	123	Error, Writ of.....	134
Double Jeopardy.....	123	Escape.....	134
Double Location.....	123	Escape of Gas.....	134
Double Taxation.....	123	Escheat.....	134
Dower.....	123	Escrows.....	134
Drains.....	124	Estates.....	135
Drawing Jurors.....	124	Estates of Decedents.....	135
Dray Wagon.....	124	Estates-tail.....	135
Dreams.....	124	Estoppel.....	135
Drivers.....	124	Estovers.....	136
Drovers.....	124	Estrays.....	136
Druggist.....	124	Evidence.....	136
Drunkards.....	124	Examination.....	141

# LIST OF TITLES IN INDEX TO NOTES.

ix

	Page		Page
Excavation.....	141	Fictitious Name.....	154
Exceptions.....	141	Fictitious Payee.....	154
Excessive Baggage.....	141	Fidelity Insurance.....	154
Excessive Claim.....	141	Fiduciaries.....	154
Excessive Punishment.....	141	Fiduciary Debts.....	154
Exchange.....	141	Field-notes.....	154
Exchange of Property.....	141	Filing Papers.....	154
Exchanges.....	141	Finding Lost Goods.....	154
Excursion Tickets.....	141	Fines.....	155
Excusable Delays.....	141	Firearms.....	155
Excuses.....	142	Fire-bote.....	155
Excusing Jurors.....	142	Fire Companies.....	155
Execution.....	142	Fire-escapes.....	155
Executors and Administrators.....	143	Fire Limits.....	155
Executor's Sale.....	147	Fires.....	155
Exemplary Damages.....	147	Fireworks.....	155
Exemptions.....	147	Firm Assets.....	155
Exiles.....	148	Firm Secrets.....	155
Ex Maleficio.....	148	First Day.....	155
Expectancy.....	148	Fish.....	155
Expectation of Death.....	148	Fishermen.....	157
Experiments.....	149	Fixing Liability.....	157
Expert Testimony.....	148	Fixtures.....	157
Expert Witness.....	149	Flags.....	157
Expert Witnesses.....	149	Float.....	157
Explosives.....	149	Floating Warehouses.....	157
Ex Post Facto Laws.....	149	Flour.....	157
Exposure to Danger.....	149	Fog.....	157
Express Companies.....	149	Following Ore Vein.....	157
Express Messengers.....	149	Following Trust Funds.....	157
Express Wagons.....	149	Food.....	157
Expulsion.....	149	Footprints.....	157
Extending Existence.....	149	Force.....	157
Extent of Possession.....	149	Forcible Detainer.....	157
Extortion.....	149	Forcible Entry and Detainer.....	157
Extra Baggage.....	150	Foreclosure.....	158
Extradition.....	150	Foreign Actions.....	158
Extrahazardous Work.....	152	Foreign Administration.....	158
Extraterritorial Authority.....	152	Foreign Adoption.....	158
Extraterritorial Effect.....	152	Foreign Bill of Exchange.....	158
Extrinsic Evidence.....	152	Foreign Contracts.....	158
		Foreign Corporations.....	158
Factors.....	152	Foreign Countries.....	158
Factory.....	152	Foreign Guardians.....	158
Failure of Consideration.....	152	Foreign Judgments.....	158
Failure to Supply Water.....	152	Foreign Law.....	158
Fairs.....	152	Foreign Marriages.....	158
Fallen Wires.....	152	Foreign Stockholders.....	158
Falling Tools.....	152	Foreign Will.....	158
Falling Walls.....	152	Foremen.....	158
False Credit.....	152	Foreseen Results.....	158
False Imprisonment.....	153	Forest Reserve.....	158
False Pretenses.....	153	Forests.....	158
False Rating.....	153	Forfeitures.....	158
False Representations.....	153	Forgery.....	159
Family Allowance.....	153	Formal Requisites.....	159
Family Obligations.....	153	Former Jeopardy.....	159
Fanciful Names.....	153	Former Testimony.....	159
Fantasia.....	153	Fornication.....	159
Fares.....	153	Foundations.....	160
Farm Implements.....	153	Fourteenth Amendment.....	160
Farm Leases.....	154	Franchises.....	160
Fast Driving.....	154	Franchise Tax.....	160
Fear.....	154	Fraud.....	160
Federal Government.....	154	Frauds, Statute of.....	161
Fee.....	154	Fraudulent Conveyances.....	163
Feed and Water.....	154	Free Speech.....	164
Fees.....	154	Free Transportation.....	164
Feigned Accomplices.....	154	Freezers.....	165
Fellow-passengers.....	154	Freight Carriers.....	165
Fellow-servants.....	154	French Pools.....	165
Fences.....	154	Friendly Fire.....	165
Ferries.....	154	Fright.....	165
Fictitious Claims.....	154	Frightening Animals.....	165

	Page		Page
Fugitive from Justice.....	165	Head of Family.....	173
Fumes and Vapors.....	165	Healers.....	173
Funeral Processions.....	165	Health.....	173
Future Advances.....	165	Hearing.....	174
Future Conditional Estates.....	165	Hearse.....	174
Future Dispute.....	165	Heirs.....	174
Future Earnings.....	165	Herding Animals.....	174
Futures.....	165	Hidden Defects.....	174
		High Voltage.....	174
Game.....	165	Highway Robbery.....	174
Gaming.....	165	Highways.....	174
Garages.....	166	Hindering Creditors.....	176
Garbage.....	166	Hiring.....	176
Garments.....	166	Historic Landmarks.....	176
Garnishment.....	166	History.....	176
Gas.....	166	Hogs.....	176
Gasoline.....	166	Holding Over.....	176
Gates.....	166	Holdups.....	176
Geese.....	166	Holographic Wills.....	176
General Bequests.....	166	Home.....	176
General Denial.....	167	Homestead.....	176
General Deposits.....	167	Homicide.....	178
General Election.....	167	Horseracing.....	181
General Guaranty.....	167	Horses.....	181
General Laws.....	167	Hospitals.....	181
General Lien.....	167	Hostile Fire.....	181
Geographical Names.....	167	Hostile Witness.....	181
Geography.....	167	Hotels.....	181
Ghosts.....	167	House.....	181
Gift Enterprises.....	167	House-bote.....	181
Gifts.....	167	Hunting Game.....	181
Goats.....	167	Husband and Wife.....	181
Good Faith.....	168		
Good Health.....	168	Ice.....	186
Goodwill.....	168	Ideal Location.....	186
Governmental Powers.....	168	Idem Sonams.....	186
Government Homestead.....	168	Identification.....	186
Government Survey.....	168	Identity of Offenses.....	186
Governor.....	168	Idiots.....	186
Grading Streets.....	168	Idle Persons.....	186
Grain.....	168	Illegal Considerations.....	186
Grain Elevators.....	168	Illegal Contracts.....	186
Grand Jury.....	168	Illegal Partnership.....	186
Grass.....	168	Illegal Trusts.....	186
Gratuitous Guaranty.....	168	Illegitimate Children.....	186
Gratuitous Suretyship.....	168	Imbeciles.....	186
Gravel.....	168	Imminence of Death.....	186
Graveyards.....	168	Imminent Danger.....	186
Grazing Cattle.....	169	Immunity from Suit.....	186
Grist-mills.....	169	Impairing Obligation of Contracts.....	186
Grounds.....	169	Impeaching Witness.....	186
Growing Crops.....	169	Impeachment.....	186
Guaranteed Stock.....	169	Impeding Flow.....	186
Guaranty.....	169	Imperfect Will.....	186
Guardian ad Litem.....	170	Implements.....	186
Guardian and Ward.....	170	Implied Acceptance.....	186
Guarding Machinery.....	171	Implied Authority.....	186
Guests.....	171	Implied Contracts.....	186
Guides.....	171	Implied Easements.....	186
Gunpowder.....	171	Implied Repeal.....	186
Guns.....	172	Implied Revocation.....	186
		Implied Warranty.....	187
Habeas Corpus.....	172	Importing Wild Game.....	187
Habitation.....	172	Imports.....	187
Hackmen.....	172	Imposition.....	187
Hack-stands.....	173	Impossible Conditions.....	187
Hand Baggage.....	173	Impossibility of Performance.....	187
Handbills.....	173	Impotency.....	187
Handwriting.....	173	Impounding Animals.....	187
Harmless Defects.....	173	Impounding Debris.....	187
Harness.....	173	Imprisonment for Debt.....	187
Harvesting Ice.....	173	Improvements.....	187
Hawkers and Peddlers.....	173	Impure Water.....	187
Hazardous Work.....	173	Imputations.....	187

# LIST OF TITLES IN INDEX TO NOTES.

xi

	Page		Page
Imputed Negligence.....	187	Interstate Consolidation...	203
Imputed Notice.....	187	Interstate Corporations...	203
Incest.....	187	Interstate Extradition.....	203
Incompatibility.....	188	Interurban Railroads.....	203
Incompatible Offices.....	188	Intervening Cause.....	203
Inconsistent Remedies.....	188	Intervention.....	204
Incorrigible Children.....	188	Intestates.....	204
Increased Interest.....	188	Intimidation.....	204
Increase of Risk.....	188	Intoxicating Liquors.....	204
Increments.....	188	Intoxication.....	204
Incriminating Evidence.....	188	Invading Province of Jury.....	204
Incriminating Evidence.....	188	Inventions.....	204
Incriminating Testimony.....	188	Inventories.....	204
Indebtedness.....	188	Investments.....	204
Indemnity.....	188	Involuntary Manslaughter.....	204
Indentures.....	189	Involuntary Payments.....	204
Independent Contractors.....	188	Irreparable Injury.....	204
Index.....	189	Irrepealable Laws.....	204
Indictments.....	188	Irresistible Force.....	204
Individual Liability.....	188	Irresistible Impulse.....	204
Indorsement.....	188	Irresponsible Agency.....	204
Inducement.....	188	Irrevocable Proxy.....	204
Inducing Breach of Contract.....	189	Irrigation.....	204
Infants.....	189	Islands.....	204
Infant Witnesses.....	191	Issuance.....	204
Infectious Disease.....	191	Items.....	205
Infirm Persons.....	191	Jail.....	205
Information and Belief.....	191	Jewelry.....	205
Informers.....	191	Joinder.....	205
Infringement.....	191	Joint Administration.....	205
In Full to Date.....	191	Joint Adoption.....	205
Inheritance.....	191	Joint Adventure.....	205
Inheritance Taxes.....	191	Joint Finders.....	205
Initial Carrier.....	191	Joint Liability.....	205
Initials.....	191	Joint Obligors.....	205
Injunction.....	191	Joint Power of Attorney.....	205
Injured Parties.....	193	Joint Stock Companies.....	205
Inkeepers.....	193	Joint Stock Company.....	205
Innocence.....	193	Joint Tenants.....	205
Immundo.....	193	Joint Wills.....	205
In Pais.....	194	Journal of Legislature.....	205
In Personam.....	194	Judges.....	205
In Rem.....	194	Judgment.....	205
Insane Delusions.....	194	Judicial Notice.....	213
Insane Persons.....	194	Judicial Sales.....	213
Insane Witness.....	195	Jurisdiction.....	214
Insanity.....	195	Jury.....	214
Inscriptions.....	195	Justices of the Peace.....	215
Insolvency.....	195	Justifiable Assault.....	215
Inspection.....	195	Justification.....	215
Inspection of Records.....	195	Juvenile Courts.....	215
Inspectors.....	195		
Installment Contracts.....	195	Keno.....	215
Instructing Servant.....	195	Kidnaping.....	215
Instructions to Jury.....	195	Killing Dogs.....	215
Insulation.....	195	Kleptomania.....	215
Insurable Interest.....	195	Knowledge of Facts.....	215
Insurance.....	195		
Insurrection.....	202	Labels.....	215
Intemperance.....	202	Labor.....	215
Intent.....	202	Laborers.....	215
Interest.....	202	Labor Laws.....	215
Interest-bearing Stock.....	202	Labor Unions.....	215
Interested Parties.....	202	Laches.....	216
Interference With Business.....	202	Lakes.....	216
Internal Revenue.....	202	Land.....	216
Internal Extradition.....	202	Landlord and Tenant.....	216
Interpleader.....	203	Landmarks.....	220
Interpolation.....	203	Land Partnerships.....	220
Interpreters.....	203	Language.....	220
Interruption.....	203	Larceny.....	220
Intersecting Veins.....	203	Last Day.....	221
Intersecting Wires.....	203	Latent Defects.....	221
Interstate Commerce.....	203		

	Page		Page
Lateral Support...	221	Louisiana.....	232
Law.....	221	Love and Affection...	232
Lawful Wedlock.....	221	Lucid Intervals...	232
Law Libraries.....	221	Lumber.....	232
Law of the Road.....	221	Lunatics.....	232
Lay Days.....	222	Lunch Wagons.....	232
Leakage.....	222		
Leases.....	222	Machinery.....	232
Leave of Court.....	222	Magazines.....	232
Legacies.....	222	Magnetic Healing.....	232
Legal Subrogation.....	222	Mail.....	232
Legatees.....	222	Mail Carriers.....	232
Legislation.....	222	Mail Clerks.....	232
Legislative Apportionment.....	222	Malice.....	232
Legislators.....	222	Malicious Attachment.....	232
Legislature.....	222	Malicious Injury.....	232
Lessening Damages.....	222	Malicious Mischief.....	232
Lessor Railroad.....	222	Malicious Prosecution.....	232
Letters.....	222	Malpractice.....	233
Letters Testamentary.....	222	Mandamus.....	234
Levees.....	222	Manslaughter.....	235
Lewdness.....	222	Manufactures.....	235
Liability of Stockholders.....	222	Manuscripts.....	236
Libel and Slander.....	222	Maps.....	236
Liberty of the Press.....	225	Marginal Purchases.....	236
Licenses.....	225	Marine Insurance.....	236
Liens.....	226	Marketable Title.....	236
Life.....	226	Markets.....	236
Life Estates.....	226	Market Value.....	236
Life Insurance.....	227	Marks.....	236
Light.....	227	Marriage.....	236
Lightning.....	227	Marriage Brokerage.....	237
Lights.....	227	Marriage Settlements.....	237
Limitation of Actions.....	227	Married Women.....	237
Limitation of Liability.....	230	Marshaling Assets and Securities.....	237
Limitations.....	230	Martial Law.....	237
Limited Guaranty.....	230	Masses.....	237
Limited Tickets.....	230	Master and Servant.....	237
Limiting Argument.....	230	Master in Chancery.....	242
Limited Number of Witnesses.....	230	Master Mechanic.....	242
Liquidated Damages.....	230	Matches.....	242
Liquidated Demands.....	230	Materiality.....	243
Lis Pendens.....	230	Maxims.....	243
Littoral Proprietors.....	230	Mayhem.....	243
Livery-stable Keepers.....	230	Meander Lines.....	243
Livestock.....	230	Meaning of Words.....	243
Livestock Carriers.....	230	Mechanics' Liens.....	243
Living Together.....	230	Medical Attendance.....	243
Loading Stock.....	231	Medical Examinations.....	243
Loafers.....	231	Medical Practitioners.....	244
Loans.....	231	Medicines.....	244
Loan Societies.....	231	Meetings.....	244
Lobbying.....	231	Memoranda.....	244
Lobbying Contracts.....	231	Memory.....	244
Local Actions.....	231	Mendicants.....	244
Local Improvements.....	231	Mental Anguish.....	244
Local Laws.....	231	Mental Attitude.....	244
Local Option.....	231	Mental Capacity.....	244
Location.....	231	Mercantile Agencies.....	244
Locators.....	231	Merchandise.....	244
Locomotives.....	231	Merchants.....	244
Lodes.....	231	Nerger.....	244
Lodging-house.....	231	Messages.....	244
Logs and Logging.....	231	Mice.....	244
Lookout.....	231	Middle Names.....	244
Loss.....	231	Midwifery.....	244
Loss of Affection.....	231	Militia.....	244
Lost Corners.....	231	Militiamen.....	244
Lost Goods.....	231	Mill-house.....	244
Lost Instruments.....	231	Mines and Minerals.....	244
Lost Property.....	232	Ministerial Acts.....	247
Lost Will.....	232	Ministerial Duties.....	247
Lotteries.....	232	Miscegenation.....	247
Lotto.....	232	Misconduct of Counsel.....	247

# LIST OF TITLES IN INDEX TO NOTES.

xiii

	Page		Page
Misconduct of Jury.....	247	Notaries.....	267
Misfeasance.....	247	Notes.....	267
Misrepresentation.....	247	Notice.....	267
Mistake.....	248	Notice to Quit.....	268
Mistaken Possession.....	248	Notoriety.....	268
Mistrial.....	248	Notorious Adultery.....	268
Mitigation.....	248	Notorious Fornication.....	268
Mitigation of Damages.....	248	Novation.....	268
Mobs.....	248	Novelty.....	268
Money.....	248	Nuisance.....	268
Money Paid.....	248	Number of Witnesses.....	270
Monopolies.....	248	Nunc Pro Tunc.....	270
Monuments.....	248	Nuncupative Wills.....	270
Moral Insanity.....	248		
Moral Obligation.....	248	Oath.....	270
Mormonism.....	248	Objection.....	270
Mortgages.....	248	Objections to Evidence.....	270
Motions.....	252	Obligation of Contracts.....	270
Motive.....	252	Obliterating Will.....	270
Multiplicity of Suits.....	252	Obscenity.....	270
Multi Will.....	252	Obstructing Justice.....	270
Municipal Bonds.....	252	Obstructions.....	270
Municipal Corporations.....	252	Obtaining Property by False Pretense.....	270
Municipal Courts.....	259	Occupation Taxes.....	270
Munn Against Illinois.....	259	Offer.....	270
Murder.....	259	Officers.....	270
Musical Instruments.....	259	Offsets.....	274
Mutilating Will.....	259	Oil.....	274
Mutilation of Dead Bodies.....	259	Oil Producers.....	274
Mutual Aid Societies.....	259	Oklahoma.....	274
Mutuality.....	259	Oleomargarine.....	274
Mutual Life Insurance.....	259	Olographic Wills.....	274
Mutual Will.....	259	Omissions.....	275
		Omitted Heirs.....	275
Names.....	259	Omnibus.....	275
Narcotics.....	259	On Demand.....	275
Narrow Channel.....	259	Oneida Community.....	275
Narrow Gauge.....	260	Open Adultery.....	275
National Banks.....	260	Open Fornication.....	275
National Forests.....	260	Opening and Vacating.....	275
Natural Consequences.....	260	Opinion.....	275
Natural Guardians.....	260	Opinion Evidence.....	275
Navigable Waters.....	260	Opium.....	275
Navigation.....	261	Oppression.....	275
Necessaries.....	261	Options.....	275
No Exeat.....	261	Oral Evidence.....	275
Negligence.....	262	Oral Republication.....	275
Negligent Homicide.....	266	Oral Will.....	275
Negotiability.....	266	Order of Liability.....	275
Negroes.....	266	Ordering Care.....	275
New Cause of Action.....	266	Orders.....	275
New Counties.....	266	Ordinances.....	275
New Parties.....	266	Ore.....	275
New Promise.....	266	Organization.....	275
Newspapers.....	266	Original Package.....	275
New Trial.....	267	Orphans.....	275
Next Friend.....	267	Ostensible Partner.....	275
Next of Kin.....	267	Osteopathy.....	275
Night Letter.....	267	Ostracism.....	275
Night-time.....	267	Other Offenses.....	275
Night-walkers.....	267	Ouster.....	275
Nitro-glycerine.....	267	Ousting Jurisdiction.....	275
Noise.....	267	Outcroppings.....	276
Nomenclature.....	267	Overhanging Trees.....	276
Nominal Damages.....	267	Overissue of Stock.....	276
Nominal Parties.....	267	Overloading Cars.....	276
Nominations.....	267	Overpayments.....	276
Nondelivery.....	267	Overseers.....	276
Nonfeasance.....	267	Overt Act.....	276
Nonforfeiture.....	267	Overtaking Vessel.....	276
Non-negotiable Paper.....	267	Overtaking Vehicles.....	276
Nonresidents.....	267	Owners of Property.....	276
Nonsupport.....	267	Own Stock.....	276
Nonuser.....	267	Own Witness.....	276
		Oyster-beds.....	276

	Page		Page
Paid-up Stock.....	276	Place of Contract.....	288
Palace Cars.....	276	Place of Crime.....	288
Parallel Lines.....	276	Place of Performance.....	288
Paranoia.....	276	Place of Taxation.....	288
Pardon.....	276	Placer Claims.....	288
Parent and Child.....	276	Plats.....	288
Parl Delicto.....	277	Pleading.....	288
Paris Mutuels.....	277	Pledges.....	289
Parks.....	277	Plumbing.....	289
Parol Agreements.....	277	Plurality of Subjects.....	289
Parol Evidence.....	277	Poison.....	289
Parol License.....	277	Poker-tables.....	289
Parol Republication.....	277	Poles.....	289
Parol Trusts.....	277	Policemen.....	289
Parol Wills.....	277	Police Power.....	289
Partial Abandonment.....	277	Policy of Insurance.....	289
Partial Assignment.....	277	Political Rights.....	290
Partial Invalidity.....	277	Polling Places.....	290
Partial Justification.....	277	Pollution of Water.....	290
Parties.....	277	Polygamy.....	290
Partition.....	278	Pool.....	290
Partition Fences.....	279	Poorhouses.....	290
Partnership.....	279	Population.....	290
Part Payment.....	282	Positive Consequences.....	290
Part Possession.....	282	Posse Comitatus.....	290
Party-walls.....	282	Possession.....	290
Pass-books.....	283	Possibilities.....	290
Passenger Carriers.....	283	Postal Cards.....	290
Passenger Elevators.....	283	Postal Clerks.....	290
Passing of Title.....	283	Posthumous Children.....	290
Past Offenses.....	283	Postnuptial Settlements.....	290
Patents.....	283	Postoffice.....	290
Paternity.....	283	Postponing Sentence.....	290
Paving Streets.....	283	Poultry.....	290
Pawnbrokers.....	283	Pounds.....	290
Pay-dirt.....	283	Powder Magazine.....	290
Payment.....	283	Power of Appointment.....	290
Peace.....	285	Power of Attorney.....	291
Peddlers.....	285	Power of Sale.....	291
Pedestrians.....	285	Powers.....	291
Penalties.....	285	Practice and Procedure.....	291
Pending Action.....	285	Practice of Medicine.....	291
Pensions.....	286	Precatory Trusts.....	291
Percolating Waters.....	285	Precedents.....	291
Peremptory Challenge.....	286	Pre-emptors.....	291
Performance.....	286	Preferences.....	291
Periodicals.....	286	Preferred Stock.....	291
Perjury.....	286	Prejudice.....	291
Permanent Employment.....	286	Premises.....	291
Permanent Nuisance.....	286	Prerogative Writs.....	291
Permanent Stay of Execution.....	286	Prescription.....	291
Permission.....	286	Presence of Judge.....	291
Perpetuities.....	286	Presentation.....	291
Personal Interest.....	286	Preservation of Life.....	291
Personal Liberty.....	286	Presumptions.....	291
Personal Property.....	286	Pretermitted Heirs.....	291
Personal Service.....	286	Prevailing Parties.....	291
Personal Unity.....	287	Principal and Agent.....	291
Petition.....	287	Principal and Surety.....	294
Petit Jury.....	287	Printers.....	295
Pharmacists.....	287	Priority.....	295
Philosopher's Stone.....	287	Prisons.....	295
Photographers.....	287	Private Carriers.....	295
Physical Examination.....	287	Private Cars.....	295
Physical Laws.....	287	Private Individual.....	295
Physicians and Surgeons.....	287	Private Laws.....	295
Picketing.....	287	Private Nuisance.....	295
Piers.....	287	Private Railroads.....	296
Pigs.....	287	Private Roads.....	296
Pilots.....	288	Private Survey.....	296
Pipe.....	288	Private Use.....	296
Pistols.....	288	Privileged Communications.....	296
Place.....	288	Privileges or Immunities.....	296



# LIST OF TITLES IN INDEX TO NOTES.

xv

	Page		Page
Privity.....	296	Rape.....	300
Probable Cause.....	296	Rates.....	303
Probate Courts.....	296	Ratification.....	303
Probate of Will.....	296	Rats.....	303
Probate Sales.....	296	Real Estate Agents.....	303
Proceeds.....	296	Real Property.....	303
Process.....	296	Reasonable Doubt.....	303
Proclamation.....	297	Reasonableness.....	303
Productiveness of Mine.....	297	Reasonable Restraint of Trade.....	304
Profits.....	297	Rebellion.....	304
Prohibited Debts.....	297	Rebuttal.....	304
Prohibition.....	297	Receipt.....	304
Prohibition Law.....	298	Receivers.....	304
Promises.....	298	Receiver's Certificates.....	305
Promise to Pay Debt of Another.....	298	Receiving Stolen Goods.....	305
Promise to Repair.....	298	Reciprocal Will.....	305
Promissory Notes.....	298	Recitals.....	305
Promoters.....	298	Reconsideration.....	305
Proof of Death.....	298	Reconvention.....	305
Propagation.....	298	Recording.....	305
Proper Names.....	298	Records.....	305
Property.....	298	Recourse.....	306
Prospecting.....	299	Recrimination.....	306
Prospectuses.....	299	Redelivery.....	306
Protest.....	299	Redemption.....	306
Province of Jury.....	299	Re-entry.....	306
Provocation.....	299	Reference.....	306
Prowlers.....	299	Reformation of Instruments.....	306
Proximate Cause.....	299	Reformatories.....	307
Proxy.....	299	Refrigerator-cars.....	307
Public Administrator.....	299	Refrigerators.....	307
Publication.....	299	Registers of Deeds.....	307
Public Corporations.....	299	Registration.....	307
Public Lands.....	299	Regulation.....	307
Public Markets.....	299	Reinsurance.....	307
Public Nuisance.....	299	Rejection.....	307
Public Policy.....	299	Relation Back.....	307
Public Property.....	299	Relationship.....	307
Public Roads.....	300	Relatives.....	307
Public Schools.....	300	Release.....	308
Public Trial.....	300	Religious Affiliations.....	309
Public Use.....	300	Religious Societies.....	309
Public Utilities.....	300	Religious Teaching.....	309
Puffing.....	300	Religious Training.....	309
Pullman Cars.....	300	Relinquishment.....	309
Punishment.....	300	Relocation.....	309
Punitive Damages.....	300	Remainders.....	309
Pupils.....	300	Remand.....	309
Purchasers.....	300	Remarks of Counsel.....	309
Purchaser's Lien.....	300	Remedy at Law.....	309
Pure Food.....	300	Remote Cause.....	309
Purging Contempt.....	300	Removal.....	309
Purprestures.....	300	Renewal.....	309
		Rents.....	309
Qualifications.....	300	Reopening Sale.....	310
Quality.....	300	Reorganization.....	310
Quantum Meruit.....	300	Repairs.....	310
Quarantine.....	300	Repeal.....	310
Quiet.....	300	Repeated Recoveries.....	310
Quiet Enjoyment.....	300	Repeated Trespases.....	310
Quieting Title.....	300	Replevin.....	310
Qui Tam Actions.....	301	Republication.....	310
Quitclaim Deeds.....	301	Repudiation.....	310
Quotient Verdict.....	301	Repugnant Clauses.....	310
Quo Warranto.....	301	Reputation.....	310
		Res Adjudicata.....	310
Race.....	301	Resale.....	310
Racing.....	301	Rescission.....	310
Raffles.....	301	Reservations.....	310
Railroads.....	301	Res Gestae.....	310
Railroad Tickets.....	303	Residence.....	310
Raised Check.....	303	Residuary Bequests.....	310
Ranging Cattle.....	303	Resignation.....	311

	Page		Page
Res Ipsa Loquitur.....	311	Searching Titles.....	318
Resisting Arrest.....	311	Seats.....	318
Respondent Superior.....	311	Second Application.....	318
Responsible Bidders.....	311	Secondary Evidence.....	318
Restaurant-keepers.....	311	Second Continuance.....	318
Restitution.....	311	Second Offense.....	318
Restitution on Reversal.....	311	Secrecy.....	318
Restraining Alienation.....	311	Secret Instructions.....	318
Restraint of Marriage.....	311	Secret Process.....	318
Restraint of Trade.....	311	Sectarian Schools.....	318
Restrictions.....	311	Section Foreman.....	318
Resulting Trusts.....	311	Security.....	318
Resurvey.....	311	Seduction.....	318
Retention of Possession.....	311	Seepage.....	319
Retreat Before Violence.....	311	Seisin.....	319
Retrospective Laws.....	311	Seisin of Wife.....	319
Return.....	311	Seizure.....	319
Return of Goods.....	311	Selecting Jury.....	319
Revenue Stamp.....	311	Self-defense.....	319
Reversal of Judgment.....	311	Senators.....	319
Reversions.....	311	Sense of Impending Death.....	319
Review.....	311	Sentence.....	319
Revisions.....	311	Separate Trial.....	319
Revival.....	311	Separation.....	319
Revocation.....	312	Separation of Jury.....	319
Rewards.....	312	Servants.....	319
Right of Way.....	312	Service.....	319
Riot.....	312	Services.....	319
Riparian Rights.....	312	Servitudes.....	319
Risks.....	312	Setoff and Counterclaim.....	319
River Banks.....	312	Setting Apart.....	319
Rivers.....	312	Setting Aside.....	319
Road Work.....	312	Setting Out Fire.....	320
Roads.....	312	Settlement.....	320
Robbery.....	312	Settlers.....	320
Röntgen Rays.....	312	Seven Years' Absence.....	320
Roots.....	312	Severability.....	320
Rowboats.....	313	Severance.....	320
Rules.....	313	Severed Estates.....	320
Running at Large.....	313	Sewers.....	320
Running With the Land.....	313	Sexual Diseases.....	320
Sabbath Day.....	313	Sexual Intercourse.....	320
Safe.....	313	Sexual Offenses.....	320
Safe Deposit Companies.....	313	Shade Trees.....	320
Safe Deposit Vaults.....	313	Sham Pleadings.....	320
Safe Premises.....	313	Sheep.....	320
Safe Tools and Places.....	313	Sheep-worrying Dogs.....	320
Safety Deposit.....	313	Shelley's Case.....	320
Sailors.....	313	Sheriffs and Constables.....	320
Sail Vessels.....	313	Sheriff's Deed.....	321
Sales.....	313	Shipping.....	321
Saloon-keepers.....	316	Shipwreck.....	322
Salt.....	316	Shore Lines.....	322
Sanitary Boards.....	316	Shores.....	322
Satisfaction.....	316	Shutting Off Water.....	322
Satisfied Judgment.....	316	Sick Persons.....	322
Satisfaction and Execution.....	316	Side Lines.....	322
Savings Banks.....	316	Sidewalks.....	322
Sawmill.....	316	Signals.....	322
Scaffolds.....	316	Signatures.....	322
Scales.....	316	Signs.....	323
Scalping Tickets.....	316	Simple Trust.....	323
Schedules.....	316	Single Offense.....	323
Schoolhouse.....	316	Situs of Property.....	323
Schools and School Districts.....	316	Skill.....	323
Scientific Facts.....	317	Slander.....	323
Seire Facias.....	317	Sleeping-cars.....	323
Scope of Authority.....	317	Sleeping Debts.....	323
Scope of Employment.....	317	Sleeping Passenger.....	323
Seal.....	317	Slot Machines.....	323
Seamen.....	318	Smoke Nuisance.....	323
Searches and Seizures.....	318	Snatching.....	323

# LIST OF TITLES IN INDEX TO NOTES.

xvii

	Page		Page
Sneering.....	323	Storing Explosives.....	330
Snow.....	323	Strangers.....	330
Socage Guardians.....	323	Straying Animals.....	330
Sodomy.....	323	Streams.....	330
Solar Time.....	323	Street Railroads.....	330
Solemnization of Marriage.....	323	Streets.....	331
Soldiers.....	323	Strikes.....	331
Solicitation.....	323	Striking Out.....	331
Spark-arresters.....	323	Students.....	331
Special Deposits.....	323	Subagents.....	331
Special Election.....	323	Subagent Support.....	331
Special Guaranty.....	323	Subject of Statute.....	331
Specialists.....	323	Subletting.....	331
Special Laws.....	323	Submerged Land.....	331
Special Lien.....	323	Submission of Controversy.....	331
Special Plea.....	323	Subpoena.....	331
Special Stock.....	324	Subrogation.....	331
Specific Bequests.....	324	Subscribing Will.....	333
Specific Performance.....	324	Subscriptions.....	333
Spectators.....	325	Substantial Performance.....	333
Speeches.....	325	Substitution.....	333
Speed.....	325	Subsurface.....	333
Speedy Trial.....	325	Subterranean Waters.....	333
Spendthrifts.....	325	Suburban Railroads.....	333
Spiritualism.....	325	Subways.....	333
Spiritual Medium.....	325	Succession of Estates.....	333
Spite Fences.....	325	Successive Actions.....	333
Spoilation.....	325	Sudden Jolts.....	333
Spooks.....	325	Suffrage.....	333
Spread of Contagion.....	323	Sugar.....	333
Spread of Fire.....	323	Suicide.....	333
Spur Tracks.....	325	Suicide Jurisdiction.....	333
Stable.....	325	Summary Proceedings.....	333
Stale Demands.....	326	Summoning Jurors.....	333
Stale Judgments.....	326	Summons.....	333
Stamps.....	326	Sunday.....	333
Standard Time.....	326	Superintendent.....	333
Standing Timber.....	326	Supersedes.....	333
Stare Decisis.....	326	Superstitions.....	333
Stated Accounts.....	326	Supervisors.....	333
States.....	326	Support.....	334
State's Evidence.....	326	Support of Children.....	334
Statistics.....	326	Support of Grantor.....	334
Statute of Limitations.....	327	Support of Sail.....	334
Statute of Uses.....	327	Support of Surface.....	334
Statutes.....	327	Suppression of Truth.....	334
Statutory Cause of Action.....	329	Surface.....	334
Statutory Liens.....	329	Surface Discovery.....	334
Statutory Mortgage.....	329	Surface Servitudes.....	334
Stay of Execution.....	329	Surface Water.....	334
Steady Employment.....	329	Surgeons.....	334
Stealing.....	329	Surgical Instruments.....	334
Steamboats.....	329	Surrogate Courts.....	334
Steam Engines.....	329	Surveys.....	334
Steam Propelled Vehicles.....	329	Survival of Action.....	334
Stench.....	329	Surviving Partner.....	334
Stenographer's Notes.....	329	Survivorship.....	334
Stifling Competition.....	329	Suspension.....	334
Stipulations.....	329	Suspicion.....	334
Stock.....	329	Swapping.....	334
Stock Clock.....	329	Swells.....	334
Stockholders.....	329	Swindling.....	334
Stockholder's Liability.....	330	Swine.....	334
Stockholders' Meetings.....	330	Switchmen.....	334
Stock-jobbing.....	330	Switch Tracks.....	334
Stockmen.....	330	Symbols.....	334
Stock Subscriptions.....	330	Syphilis.....	334
Stolen Negotiable Instruments.....	330		
Stoppage in Transitu.....	330	Tailors.....	334
Storage Companies.....	330	Taking.....	334
Store.....	330	Taking Acknowledgment.....	335
Storehouse.....	330	Talesmen.....	335

	Page		Page
Taxation.....	335	Turbary.....	350
Taxpayers.....	339	Turntable Cases.....	350
Tax Title.....	339		
Teachers.....	339	Ultra Vires.....	350
Teamsters.....	339	Unattended Teams.....	350
Tearing Will.....	339	Unauthorized Acts.....	350
Telegraphs and Telephones..	339	Unborn Child.....	350
Telephones.....	340	Uncommunicated Threats .....	350
Temporary Stay.....	340	Uncompleted Building.....	350
Tenancy at Will.....	340	Uncompleted Will.....	350
Tenancy in Common.....	340	Unconscionable Contracts.....	350
Tenants.....	341	Uncontrollable Impulse .....	350
Tender.....	341	Underground Roads.....	351
Tenpins.....	341	Underground Servitudes.....	351
Term.....	341	Underground Water.....	351
Termination.....	341	Undertakings.....	351
Testamentary Capacity.....	342	Undisclosed Principal.....	351
Testamentary Guardians.....	342	Undue Influence.....	351
Testamentary Letters.....	342	Ungentlemanly Conduct.....	351
Testamentary Writing.....	342	Uniformity.....	351
Theaters and Shows.....	342	Unions.....	351
Theft.....	342	United States.....	351
Thief.....	342	United States Mail.....	351
Third Persons.....	342	Unit Voting of Stock.....	351
Threats.....	342	Unknown Owners.....	351
Ticket Agents.....	342	Unlawful Detainer.....	351
Tickets.....	342	Unlawful Search.....	351
Timber.....	342	Unlicensed Dog.....	351
Timber Deeds.....	342	Unliquidated Demands.....	351
Time.....	342	Unloading Stock.....	351
Title.....	343	Unmarried Person.....	351
Title of Statute.....	343	Unpaid Subscription.....	351
Tonnage Duties.....	343	Unprofessional Conduct.....	351
Tools.....	343	Unregistered Secrets.....	351
Topography.....	343	Unrepeated Messages.....	351
Torpedoes.....	343	Urging Verdict.....	351
Torts.....	343	Use and Occupation.....	352
Total Loss.....	343	Uses and Trusts.....	352
Towns.....	343	Usury.....	352
Tracks.....	343	Utility.....	352
Traction Engines.....	343	Uttering.....	352
Trademarks and Trade Names.....	343		
Trade Secrets.....	344	Vacancy Clause.....	352
Trade Unions.....	344	Vacating.....	352
Trading.....	344	Vaccination.....	352
Trading Stamps.....	344	Vagrancy.....	352
Train Conductor.....	344	Valuation.....	353
Train Dispatcher.....	344	Value.....	353
Training Schools.....	344	Vapors.....	353
Trains.....	344	Variance.....	353
Train-wrecking.....	344	Variety Shows.....	353
Tramps.....	344	Vaults.....	353
Transcript.....	344	Vehicles.....	353
Transfer.....	344	Veins.....	353
Transfer Taxes.....	345	Vendor and Purchaser.....	353
Transitory Actions.....	345	Vendor's Lien.....	356
Transitory Property.....	345	Venereal Disease.....	356
Transportation.....	345	Ventilation of Cars.....	356
Travelers.....	345	Venue.....	356
Traveling Salesmen.....	345	Veracity of Witness.....	356
Trees.....	345	Verdict.....	356
Trespass.....	345	Verification.....	356
Trespassing Animals.....	345	Vermin.....	356
Trespass to Try Title.....	345	Vessels.....	356
Trial.....	345	Vested Legacies.....	356
Trolley Cars.....	346	Vested Rights.....	356
Trover and Conversion.....	346	Veteran Soldiers.....	356
Trust Deeds.....	347	Veterinary Surgeons.....	356
Trustees.....	347	Vice-principals.....	356
Trusts.....	347	Vicious Animals.....	356
Truthfulness.....	350	View by Jury.....	357
Trying Title.....	350	Vigilantes.....	357
		Violation of Law.....	357

# LIST OF TITLES IN INDEX TO NOTES.

xix

	Page		Page
Violence.....	357	Wearing Apparel.....	360
Void Judgment.....	357	Weeds.....	360
Void Marriage.....	357	Week.....	361
Void Ordinance.....	357	Weevils.....	361
Void Tax Sale.....	357	Weight of Evidence.....	361
Voir Dire.....	357	Weights and Measures.....	361
Volatile Oil.....	357	Walls.....	361
Voluntary Appearance.....	357	Wharves.....	361
Voluntary Association.....	357	Wheel of Fortune.....	361
Voluntary Conveyances.....	357	Whereabouts Unknown.....	361
Voluntary Exposure.....	357	Widow's Election.....	361
Voluntary Payments.....	357	Width of Road.....	361
Voluntary Trusts.....	357	Wife.....	361
Volunteers.....	357	Wild Animals.....	361
Voting.....	357	Willful Negligence.....	361
Voting Machines.....	357	Wills.....	361
Voting Trusts.....	357	Wind.....	369
		Windows.....	369
Wagers.....	357	Wires.....	369
Wages.....	357	Withdrawal.....	369
Wagons.....	357	Without Recourse.....	369
Waiver.....	357	Witnesses.....	369
Walls.....	357	Woodenware.....	371
Want of Chastity.....	357	Woods and Forests.....	371
Want of Skill.....	357	Words and Phrases.....	372
Wanton Injury.....	357	Words Libelous Per Se.....	374
War.....	358	Work and Labor.....	374
Wards.....	358	Wrecks.....	374
Warehousemen.....	358	Writing.....	374
Warning Passenger.....	358	Writ of Assistance.....	374
Warning Servant.....	358	Writ of Audita Querela.....	374
Warning Trespassers.....	358	Writ of Ne Exeat.....	374
Warrant.....	358	Writ of Restitution.....	374
Warranty.....	358	Wrongful Attachment.....	374
Waste.....	358	Wrongfully Obtained Evidence.....	374
Watches.....	359		
Watchmen.....	359	X-ray Photographs.....	374
Watered Stock.....	359		
Waters and Watercourses.....	359	Yardmaster.....	374
Ways.....	360	Year.....	374
Weapons.....	360	Youthful Servants.....	374



# INDEX-DIGEST

TO THE

## MONOGRAPHIC NOTES

IN THE

## AMERICAN STATE REPORTS,

VOLUMES 1 TO 140, INCLUSIVE.

### ABANDONED WIFE.

Contract and property rights of. See Husband and Wife, § 11.

### ABANDONMENT.

See, also, references under Release; Resignation; Waiver.

Jurisdiction of person leaving state with no intention to return. See Absentees, § 1.

Adoption of abandoned children. See Adoption, § 1.

Of children as criminal offense. See Criminal Law, § 1.

Dedication of street by. See Dedication, § 1.

Divorce for. See Divorce, §§ 2, 3.

Of residence. See Domicile, § 1.

Loss of easement by. See Easements, § 10.

Of trade or occupation as waiver of exemption. See Exemptions, § 1.

Rights and duties of finders of lost goods. See Finding Lost Goods, §§ 1-3.

Of highway. See Highways, § 4.

Of homestead. See Homestead, § 10.

Of quarrel prerequisite to existence of law of self-defense. See Homicide, § 7.

Of child resulting in its death as homicide. See Homicide, § 10.

Contract and property rights of abandoned wife. See Husband and Wife, § 11.

Of leased premises before expiration of lease. See Landlord and Tenant, §§ 21, 22.

Validity of marriage by abandoned spouse. See Marriage, § 4.

Of mining claim. See Mines and Minerals, § 10.

Of public streets. See Municipal Corporations, § 28.

Of public office. See Officers, § 6.

Relinquishment of legal right or claim. See Release, §§ 1-6.

Of family as vagrancy. See Vagrancy, § 2.

Index-Digest—1

### § 1. In General.

Defined. 135: 890.

Property or rights subject to. 135: 894.

Operation and effect. 135: 910.

### § 2. Essential Elements.

Necessity for intent and acts evincing it. 135: 890.

Must be voluntary. 135: 893.

### § 3. Facts Establishing.

Facts tending to show intent. 135: 899.

What constitutes temporary absence not amounting to abandonment. 135: 902.

Effect of mere lapse of time or nonuser. 135: 903.

Effect of failure to pay taxes. 135: 908.

Effect of partial abandonment. 135: 908.

Effect of making other or subsequent applications for or entries of public land. 135: 908.

Effect of sale or relinquishment. 135: 909.

### ABATEMENT.

Of rent on destruction of building. See Landlord and Tenant, § 25.

Of purprestures. See Navigable Waters, §§ 10, 11.

Of nuisance. See Nuisance, §§ 2, 9.

Of legacies. See Wills, § 53.

**ABATEMENT AND REVIVAL.**

PENDENCY OF ACTION IN STATE COURT AS ABATING FEDERAL SUIT AND IN FEDERAL COURT AS ABATING STATE SUIT, § 1.

DEATH OF PARTY, § 2.

ACTION FOR DEATH BY WRONGFUL ACT, § 3.

SUBSTITUTION OF EXECUTOR OR ADMINISTRATOR, § 4.

CONSOLIDATION OR DISSOLUTION OF CORPORATIONS, § 5.

Effect of termination of plaintiff's cause of action pending suit. See Judgment, § 1.

Validity and effect of judgment for or against deceased person. See Judgment, §§ 3, 4.

Abatement of suit as termination of lis pendens. See Lis Pendens, § 1.

Substitution on death of party. See Parties, § 2.

**§ 1. Pendency of Action in State Court as Abating Federal Suit and in Federal Court as Abating State Suit.**

In general. 82: 587.

Foreclosure proceedings. 82: 592.

Different parties. 82: 593.

Attachment and garnishment. 82: 594.

Creditors' bill. 82: 594.

Admiralty cases. 82: 595.

Probate matters. 82: 595.

Judgments. 82: 596.

**§ 2. Death of Party.**

After jurisdiction is obtained. 29: 816, 817.

Before suit brought. 29: 818, 819.

**§ 3. — Action for Death by Wrongful Act.**

Death of parent entitled to sue. 70: 685.

— Death pending suit. 70: 685.

Death of wrongdoer. 70: 685, 686.

Statutory provisions. 70: 686.

**§ 4. — Substitution of Executor or Administrator.**

Notice of substitution. 50: 742.

By supplemental summons and complaint. 50: 742.

Notice of substitution. 50: 742.

**§ 5. Consolidation or Dissolution of Corporations.**

General rule. 89: 648.

Kansas rule. 89: 648.

Substitution of consolidated corporation after adjudication against constituent company. 89: 648.  
Dissolution of corporation. 134: 311, 310.

**ABBREVIATIONS.**

For names. See Names, § 3.

**ABETTERS.**

Of attempt to commit crime. See Criminal Law, § 4.

**ABILITY.**

See references under Skill.

**ABNEGATION.**

See Rescission; Revocation.

**ABODE.**

See Domicile.

**ABOLITION.**

Of cemeteries. See Cemeteries, § 2.

Of curtesy. See Curtesy, § 2.

**ABORTION.**

Consent of woman as defense. See Criminal Law, § 7.

Killing in performing abortion as homicide. See Homicide, § 10.

Admissibility of dying declarations of victim of. See Homicide, § 22.

**ABSCONDING DEBTORS.**

Proceedings to prevent debtors from departing or removing property from jurisdiction. See No Execut, §§ 1-4.

**ABSENCE.**

Temporary absence as abandonment. See Abandonment, § 3.

Of spouse for five years as defense in prosecution for bigamy. See Bigamy, § 3.

Presumption of death from seven years' absence. See Death, § 1.

**ABSENCE OF JUDGE.**

At criminal trial. See Criminal Law, § 44.  
From civil trial. See Trial, § 1.

**ABSENCE OF MALICE.**

Reducing homicide to manslaughter. See Homicide, § 3.

**ABSENCE OF WITNESS.**

Admissibility of testimony of absent witness given in former proceeding. See Criminal Law, § 36.



As ground for continuance of criminal case. See Criminal Law, § 42.  
As ground for admitting his evidence given at a former trial. See Evidence, § 30.

### ABSENTEES.

Jurisdiction over. See Courts, § 1.  
Right to appointment as executor or administrator. See Executors and Administrators, § 1.  
Right to exemptions. See Exemptions, § 2.  
Garnishment of debts due from resident to absentee. See Garnishment, § 2.  
Mode of compelling road work due from. See Highways, § 2.  
Rights of wife of absentee. See Husband and Wife, § 11.  
Effect of discharge of insolvent on debts due to citizens of sister state and nonresidents. See Insolvency, §§ 2, 3.  
Judgment based on personal services on. See Judgment, § 45.  
Discrimination against absentees in imposition of license tax. See Licenses, § 4.  
Capacity to plead statute of limitations. See Limitation of Actions, § 9.  
Proceedings to prevent residents from departing or removing their property from the jurisdiction. See *Ne Exeat*, §§ 1-4.  
Exemption from civil process while attending court. See Process, § 4.

#### § 1. Jurisdiction Over Absent Citizens.

In general. 53: 186-189.  
Mode of serving process. 53: 179.  
Proceedings in rem to enforce liens, determine conflicting claims of title or recover possession of property. 53: 181.  
Proceedings in personam. 53: 181.  
Persons temporarily in state. 53: 181.  
Foreign corporation doing business in state. 53: 182.  
One leaving state with no intention to return. 53: 182.  
Divorce proceedings. 53: 182.  
Children in custody of nonresident. 53: 184.  
Guardianship proceedings. 53: 185.  
Voluntary appearance. 53: 189.

#### § 2. Proceedings Against Unknown Owners.

Purpose of proceedings. 87: 358.  
Validity of statutes authorizing. 87: 360.  
Procedure—Compliance with statute. 87: 362.  
— Petition. 87: 362.  
— Affidavit. 87, 363.  
— Parties. 87: 364.  
In equity proceedings. 87: 364.  
Against unknown heirs. 87: 365.

Partition and foreclosure suits. 87: 366.

Quieting title. 87: 366.

Tax and escheat proceedings and specific performance. 87: 367.

Effect of judgment. 87: 368.

— Against infants. 87: 368.

### ABSOLUTE DEED.

As mortgage. See Mortgages, §§ 1, 3.

### ABSOLUTE GUARANTY.

What constitutes. See Guaranty, § 2.

### ABSOLUTE WRIT.

Of prohibition. See Prohibition, § 7.

### ABSTRACTS OF TITLE.

See, also, Registers of Deeds.

Rights of abstractor to examine and copy public records. See Records, § 1.

#### § 1. Liability of Abstractors.

Want of skill. 72: 315.  
Mistake due to ignorance or negligence. 72: 315.  
Negligent omission of tax sale or encumbrance. 72: 316.  
Incorrectly reporting quantity of land. 72: 316.  
Contributory negligence of employer. 72: 316, 317.  
Liens found in records not certified as searched. 72: 317.  
To whom liable. 72: 317.  
Time to sue and limitations. 72: 319.

#### § 2. Access to Public Records.

Right of abstractors to examine and copy public records. 124: 912.

### ABUSE OF FRANCHISE.

As ground for forfeiture. See Corporations, § 71.

What constitutes and liability for. See Process, §§ 7, 8.

### ABUTTING OWNERS.

Mutual rights, duties and liabilities of owners of adjoining lands arising from or incident to the contiguity of their lands. See Adjoining Land Owners.

Right to compensation for erection of poles and wires in streets and highways. See Electricity, § 2.

Rights, obligations and remedies of owners of property abutting highways. See Highways, § 4.

Rights and liabilities of owners whose property abuts public street. See Municipal Corporations, §§ 23, 24.  
 Injuries to owners of land abutting railroads. See Railroads, § 11.  
 — Fire communicated from engine. See Railroads, § 14.

### ACADEMIES.

See Schools and School Districts.

### ACCELERATING FLOW.

Of streams or surface water. See Waters and Watercourses, § 11.

### ACCEPTANCE.

Of check by bank. See Banks and Banking, § 8.  
 Of bill of exchange. See Bills and Notes, § 4.  
 Of work as waiver of imperfect performance of contract. See Contracts, § 21.  
 Of dedicated property. See Dedication, §§ 2, 3.  
 Taking sale out of operation of statute of frauds. See Frauds, Statute of, § 6.  
 Of guaranty. See Guaranty, § 3.  
 Of insurance policy. See Insurance, § 5.  
 Of public office. See Officers, § 7.  
 Of option to purchase land. See Vendor and Purchaser, § 3.

### ACCEPTANCE OF BENEFIT.

Estoppel to contest will by. See Wills, § 23.

### ACCESSION.

Rights arising upon the intermixture of goods of the same kind belonging to different owners. See Confusion of Goods.  
 Additions to the soil by accretion or reliction. See Navigable Waters; Waters and Watercourses.

#### § 1. Acquisition of Title by Accession.

Trespass or wrongful taking of raw material gives no title to manufacturer. 44: 444.  
 Property taken innocently. 44: 446.  
 Rights of bona fide purchaser from wrongful taker. 44: 447.

### ACCESSORIES.

Who are. See Criminal Law, § 12.

### ACCIDENT.

Presumption of negligence from. See Carriers, § 33.  
 Negligence presumed from fall of passenger elevator. See Carriers, § 55.  
 What is death by accident. See Insurance, § 10.  
 Presumption of negligence from accident. See Negligence, §§ 20, 21.

### ACCIDENTAL ALTERATION.

Of writing. See Alteration of Instruments, § 4.

### ACCIDENT INSURANCE.

Mutual or membership accident insurance. See Beneficial Associations, § 2.

### ACCOMMODATION PAPER.

See Bills and Notes, § 1.

### ACCOMMODATIONS.

Duty of carrier to furnish seats for passengers. See Carriers, §§ 47, 48.

### ACCOMPLICES.

In burglary. See Burglary, § 1.  
 Who are. See Criminal Law, § 12.  
 Testimony and corroboration of. See Criminal Law, §§ 32-34.

### ACCORD AND SATISFACTION.

WHAT CONSTITUTES AN ACCORD, § 1.  
 GENERAL NATURE AND REQUISITES, § 2.  
 CONSIDERATION, § 3.  
 SATISFACTION, § 4.  
 MATTERS OR CLAIMS SUBJECT TO, § 5.  
 WHO MAY MAKE, § 6.

#### § 1. What Constitutes an Accord.

In general. 100: 420.  
 Mere promise of creditor. 100: 421.  
 Necessity for complete knowledge of facts. 100: 422.  
 Acceptance of money or check in full. 100: 426.  
 Receipt as evidence of accord. 100: 427.

#### § 2. General Nature and Requisites.

Definition. 100: 392.  
 Distinguished from novation. 100: 393.  
 Distinguished from payment or performance. 100: 393.  
 Distinguished from compromise. 100: 394.  
 Distinguished from composition. 100: 394.  
 Distinguished from release. 100: 394.  
 Necessity for accord. 100: 420.  
 Necessity for consideration. 100: 428.  
 Necessity for both accord and satisfaction. 100: 450.

#### § 3. Consideration.

Necessity. 100: 428.  
 Sufficiency, in general. 100: 428.

Distinction between liquidated and unliquidated claims. 100: 429.  
 Part payment—In money. 100: 431.  
 — In property. 100: 431.  
 — Both property and money. 100: 432.  
 — Combination of money, notes or executory agreements. 100: 433.  
 — Notes or executory agreements. 100: 436.  
 — Acceptance of security. 100: 439.  
 — Payment or advancement of funds by third persons. 100: 439.  
 — By insolvent or embarrassed debtor. 100: 441.  
 — Time and place of payment. 100: 443.  
 — Waiver of rights by either debtor or creditor. 100: 446.  
 — Release or discharge of mutual obligations. 100: 448.  
 Effect of illegal consideration. 100: 449.

#### § 4. Satisfaction.

Necessity for. 100: 450.  
 Effect of waiving conditions of accord. 100: 452.  
 Time to make. 100: 452.  
 What constitutes. 100: 452.  
 Effect of tendering. 100: 453.

#### § 5. Matters or Claims Subject to.

Necessity for dispute. 100: 409.  
 Disputed claim defined. 100: 412.  
 Matters arising from contractual or personal relations. 100: 415.  
 Torts. 100: 417.  
 Judgments and decrees. 100: 417.

#### § 6. Why may Make.

Strangers to transaction. 100: 394.  
 Joint debtors. 100: 399.  
 Joint tort-feasors. 100: 401.  
 Joint creditors. 100: 402.  
 Attorneys and agents. 100: 403.  
 Executors and administrators. 100: 405.  
 Husband representing wife. 100: 407.  
 Receivers. 100: 407.  
 Next friend of infant. 100: 409.

### ACCOUNT BOOKS.

As evidence. See Evidence, § 20.

### ACCOUNTING.

By associations. See Associations, § 4.  
 Between attorney and client. See Attorney and Client, § 12.  
 By cotenant in possession of mine. See Mines and Minerals, § 13.  
 No exeat as auxiliary remedy. See No Exeat, § 3.  
 By illegal partnership. See Partnership, § 17.  
 Between part owners of vessels. See Shipping, § 2.

### ACCOUNTS.

Application of payments made on. See Payment, § 6.

### ACCOUNT STATED.

Applicability of statute of frauds to. See Frauds, Statute of, § 1.

#### § 1. General Note.

Definitions. 136: 39, 40; 134: 1021.  
 Who may state accounts. 136: 41.  
 What accounts may be stated. 136: 41.  
 Form of statement. 136: 42.  
 — Statement of balances. 136, 43.  
 — Oral or written. 136: 43.  
 Consent to balances—Expressed. 136: 43.  
 — Implied. 136: 44.  
 — Inferred from retention of account. 136: 45.  
 Effect of statute of frauds. 136: 47.  
 Debts evidenced by deeds or notes. 136: 47, 48.  
 Presumption of correctness. 136: 48.  
 Necessity for existence of obligation to pay. 136: 49.

### ACCRETIONS.

On navigable waters. See Navigable Waters, §§ 3-8.  
 Apportionment of accretions on non-navigable waters. See Waters and Watercourses, § 6.

### ACCRUAL OF CAUSE.

On civil judgment. See Limitation of Actions, § 5.  
 For corporate stock subscription. See Limitation of Actions, § 3.  
 By surety against principal. See Principal and Surety, § 6.

### ACCUMULATIONS.

See Perpetuities.  
 On preferred stock. See Corporations, § 19.

**ACKNOWLEDGMENT.**

IN GENERAL, § 1.  
 INTEREST DISQUALIFYING OFFICER TO TAKE, § 2.  
 CERTIFICATE, § 3.  
 DEFECTS IN CERTIFICATE, § 4.  
 CONCLUSIVENESS OF CERTIFICATE, § 5.  
 Necessary to constitute instrument color of title. See Adverse Possession, § 9.  
 Of chattel mortgage. See Chattel Mortgages, § 2.  
 Taking case out of operation of statute of limitations. See Limitation of Actions, § 15.  
 Reformation of certificate. See Reformation of Instruments, § 1.

**§ 1. In General.**

Validity of acknowledgment taken over the telephone. 127: 555.

**§ 2. Interest Disqualifying Officer to Take.**

As party to a deed. 56: 798.  
 Interest not appearing in deed. 56: 800.  
 Relationship to party. 56: 801.  
 Acting as attesting witness. 56: 802.  
 Agent or attorney of party. 56: 802.  
 Representative of corporation executing deed in its behalf may take the acknowledgment. 56: 802.  
 Attorney for husband or wife. 56: 803.

**§ 3. Certificate.**

Nature and purpose. 108: 528.  
 Rule for construction. 108: 530.  
 Requirements of certificate. 108: 531.

**§ 4. Defects in Certificate.**

Matters relating to manner of reciting facts or form of certificate. 108: 532.  
 Clerical errors, omissions and blank spaces. 108: 534.  
 Matters relating to venue. 108: 543.  
 Matters relating to time of acknowledgment and date of certificate. 108: 545.  
 Matters relating to officer taking certificate. 108: 547.  
 Matters relating to party making acknowledgment or his identity. 108: 555.  
 Matters relating to identification of instrument — Acknowledgment. 108: 559.  
 Recitals respecting duties or acts of office. 108: 560.

Recitals of acts or statements made by party at time of acknowledgment. 108: 563.

What constitutes substantial compliance with statute by use of equivalents. 108: 565.

Certificate by corporation. 108: 573.

Certificate by partnership. 108: 577.

Certificate by attorney in fact. 108: 577.

**§ 5. Conclusiveness of Certificate.**

General system respecting acknowledgments. 54: 150.

Taking as a judicial act. 54: 150.

Consequence of regarding taking as judicial act. 54: 151.

Effect of appearance before officer. 54: 153.

Burden of proof and weight of evidence. 54: 156.

Corroboration of party. 54: 156.

Competency of officer as witness. 54: 157.

**ACQUIESCENCE.**

Of depositor in bank balances. See Banks and Banking, § 15.

Estoppel by. See Estoppel, § 1.

**ACTION.**

Actions in rem, and in personam against non-residents. See Absentees, § 1.

Against unknown owners. See Absentees, § 2.  
 For removal of lateral support. See Adjoining Land Owners, § 1.

Proceedings to procure adoption. See Adoption, § 1.

To enforce property rights in dogs. See Animals, § 2.

To enforce liability of sureties on appeal bonds. See Appeal and Error, § 4.

Proceedings for restitution on reversal of judgment. See Appeal and Error, § 9.

Appearance in civil actions. See Appearance, § 1.

Of assumpsit. See Assumpsit.

On commercial paper. See Bills and Notes, §§ 21, 22.

Boundary suits. See Boundaries, §§ 4, 8.

Against carrier for loss or injury to baggage. See Carriers, § 65.

Remedies of parties whose goods have been commingled with those of others. See Confusion of Goods, § 4.

For breach of contract. See Contracts, § 26.

By stockholders on behalf of corporations. See Corporations, § 35.

For breach of covenant of seisin. See Covenants, § 10.

For injury resulting in death. See Death, §§ 3-7.

For recovery of specific personal property wrongfully detained. See Detinue, § 1.

To recover land. See Ejectment, § 1.

Choice of remedies. See Election of Remedies.

By administrator de bonis non. See Executors and Administrators, § 26.

By finder or owner of lost goods. See Finding Lost Goods, § 4.

For forcible entry and unlawful detainer. See Forcible Entry and Detainer, § 5.

By guardians. See Guardian and Ward, § 11.

By, against or between husband and wife. See Husband and Wife, §§ 23, 24.

By wife for separate maintenance. See Husband and Wife, § 30.

Enjoining prosecution of action in another state or country. See Injunction, § 5.

Enjoining multiplicity of suits. See Injunction, § 8.

By or against insane persons. See Insane Persons, § 6.

On insurance policies. See Insurance, § 45.

Interpleader proceedings. See Interpleader, §§ 1-4.

To enforce judgment. See Judgment, §§ 51-54.

To recover stolen goods. See Larceny, § 9.

Libel or slander in the course of judicial proceedings. See Libel and Slander, §§ 5-8.

Time to sue and limitations. See Limitations of Actions, § 5.

Rule of lis pendens. See Lis Pendens, § 1.

On lost instruments. See Lost Instruments, § 1.

Malicious prosecution of civil action. See Malicious Prosecution, § 1.

For injuries to servant. See Master and Servant, § 29.

Between cotenants of mines. See Mines and Minerals, § 19.

Remedies of mortgagor at common law. See Mortgages, § 16.

By or against cities. See Municipal Corporations, § 40.

Against public officers. See Officers, § 29.

New parties and intervention in civil actions. See Parties, §§ 2, 3.

For partition of property among co-owners. See Partition, § 6.

To recover payments made. See Payment, § 2.

Qui tam actions. See Penalties, § 1.

By or against principal and agent. See Principal and Agent, § 18.

By surety to compel principal to perform. See Principal and Surety, § 5.

For abuse of process. See Process, § 8.

Prohibition of prosecution of action. See Prohibition, §§ 1-7.

Against receivers. See Receivers, § 7.

To reform writing. See Reformation of Instruments, § 6.

Covenant not to sue. See Release, § 6.

Replevin. See Replevin.

For goods sold. See Sales, § 16.

Scire facias proceedings. See Scire Facias, § 1.

For seduction. See Seduction, § 2.

By joint owners of vessels against third persons. See Shipping, § 3.

Immunity of state from suit. See States, § 6.

Use of telephone in legal proceedings. See Telegraphs and Telephones, § 9.

Between cotenants. See Tenancy in Common, § 7.

Trover. See Trover and Conversion, § 2.

By vendor or purchaser of land. See Vendor and Purchaser, §§ 7-12.

Local and transitory actions. See Venue, § 1.

When transitory actions may not be prosecuted in sister state or foreign country. See Venue, § 2.

### § 1. Right to Sue in One State for Cause of Action Created by Statute of Another State.

In general. 14: 350.

Action for penalty. 14: 352.

Action for death by wrongful act. 14: 353.

Proof of law of foreign state. 14: 354.

## ACTIONABLE IMPUTATIONS.

Words libelous per se. See Libel and Slander, § 2.

## ACT OF GOD.

Liability of carrier for delay caused by. See Carriers, § 13.

Liability of warehousemen for loss by. See Warehousemen, § 6.

## ACTORS.

Contracts of. See Theaters and Shows, § 1.

## ACTUAL BIAS.

See Bias.

## ACTUAL BREAKING.

As element of burglary. See Burglary, § 1.

## ACTUAL DAMAGES.

See Damages.

## ACTUAL NOTICE.

See Notice.

## ACTUAL POSSESSION.

See Adverse Possession.

## ADDITION.

See Accession.

## ADDITIONAL SERVITUDES.

Bridges as. See Bridges, § 1.

Electric poles and wires as. See Electricity, § 2.

Gas mains and pipes as. See Gas, § 1.

On highways. See Highways, § 5.

On public streets. See Municipal Corporations, § 26.

Steam railroads as. See Railroads, § 3.

Street railroads as. See Street Railroads, § 3.

Telegraph and telephone poles and wires are not. See Telegraphs and Telephones, § 1.

Water-mains, conduits, tanks and hydrants as additional servitudes. See Waters and Watercourses, § 12.

**ADDITIONS.**

To property otherwise than by natural growth or increase. See Accession, § 1.  
To written instruments. See Alteration of Instruments, § 2.

**ADDRESSEE.**

Duty of telegraph company to find. See Telegraphs and Telephones, § 2.

**ADEMPMENT OF LEGACIES.**

Nature and essentials. See Wills, §§ 50-52.

**ADEQUATE REMEDY AT LAW.**

As bar to mandamus. See Mandamus, § 1.  
As bar to cancellation of instrument in equity. See Cancellation of Instruments, § 7.

**ADJOINERS.**

Calls for. See Boundaries, § 4.

**ADJOINING LAND OWNERS.**

See references under Abutting Owners.  
Liability for injuries from defects in partition fences. See Fences, § 1.  
Liability for injuries to adjoining owners from negligently setting out fires. See Fires, § 2.  
Enjoining excavations. See Injunction, § 4.  
Liability of railroad for injuries to adjoining lands incident to operation of road. See Railroads, § 11.

**§ 1. Right to Lateral Support.**

Definitions. 33: 446.  
General right to support of soil. 29: 764-766.  
Assimilation to rules governing subjacent support. 33: 446.  
Right as incident to land in natural condition. 33: 447.  
Right to excavate one's own land. 33: 449.  
Effect of grants or special agreements. 33: 451.  
Right to support for buildings and artificial structures. 33: 453, 456.  
Support from underground water. 33: 455.  
Right to support for buildings can only be acquired by grant, statute or prescription. 33: 456-464.  
Right as against municipal corporations. 33: 465.  
Right as against corporation acting under legislative authority. 33: 467.  
Liability for negligent excavations. 33: 468.

Duty to give notice of intent to excavate. 33: 470.

Remedies for violation of rights—Injunction. 33: 471.

— Action for damages. 33: 472.

— Limitation of actions. 33: 472.

— Who may sue and be sued. 33: 473.

— Acts of independent contractors. 33: 473.

— Defenses. 33: 474.

Damages for violation of rights. 33: 474.

Consequential damages to buildings. 33: 474.

Measure of damages. 33: 475.

**§ 2. Use of Premises in General.**

Reasonable use. 123: 566.

Test of permissible use. 123: 566.

Creation of danger by third persons. 123: 567.

Insecure walls and structures. 123: 568.

Walls standing after fire. 123: 569.

Dangerous chimneys. 123: 570.

Falling tools and building material. 123: 570.

Snow, ice and water from roof. 123: 571.

Spite fences. 123: 572.

Placing earth near boundary. 123: 573.

Pollution of wells and underground water. 123: 574.

Offensive fumes and vapors. 123: 575.

Operation of machinery. 123: 576.

Setting out fires. 123: 576.

Trees overhanging boundary. 123: 573.

Roots penetrating adjoining land. 123: 574.

Weeds. 123: 574.

**§ 3. Blasting and Storing Explosives.**

Storage. 123: 578.

Blasting throwing rocks and debris. 123: 579.

Blasting merely causing concussion. 123: 579.

Place of blasting. 123: 581.

Warning of blasts. 123: 583.

Injury to property. 123: 584.

Injury to crops and animals. 123: 584.

Personal injuries. 123: 584.

Enjoining blasting. 123: 585.

## ADJOURNMENT.

Of judicial sale. See Judicial Sales, § 4.

## ADMINISTRATOR DE BONIS NON.

See Executors and Administrators, §§ 23-26.

## ADMINISTRATOR'S SALES.

See Executors and Administrators, §§ 20-22.

## ADMINISTRATOR WITH WILL ANNEXED.

Right to execute trust when decedent was sole or last surviving trustee. See Trusts, § 11.

## ADMIRALTY.

Pendency of other proceedings as ground for abatement of admiralty cases. See Abatement and Revival, § 1.

## ADOPTION.

GENERAL NOTE, § 1.

EFFECT ON KINDRED OF FOSTER PARENT, § 2.

SERVICES OF CHILD, § 3.

DESCENT OF PROPERTY OF ADOPTED CHILD, § 4.

RIGHT OF ADOPTED CHILD TO INHERIT, § 5.

### § 1. General Note.

Origin of the law. 39: 210.

Nature of proceeding. 39: 211.

Constitutionality of statutes. 39: 212.

Who may adopt. 39: 213.

Joint adoptions. 39: 213.

Who may be adopted. 39: 214.

Validity of adoption. 39: 215.

Collateral attack on adoption. 39: 215-218.

Estoppel to question validity. 39: 219.

Proceedings to procure adoption. 39: 220.

Proceedings to annul adoption. 39: 222.

General effect of adoption. 39: 223.

Right of adopted child to inherit. 39: 223; 109: 675.

Right of children of adopted child to inherit by right of representation. 39: 225.

Right to take under devise to heirs. 39: 226; 109: 678.

Inheritance from adopted child. 39: 228; 109: 676.

— Rights of adopting and natural parents. 39: 228.

Extraterritorial effect of adoptions. 39: 229.

### § 2. Effect on Kindred of Foster Parent.

Historical review of adoption. 109: 674.

Inheritance by adopted child. 109: 675.

Inheritance from adopted child. 109: 676.

Property rights of surviving spouse. 109: 676.

Rights under wills. 109: 678.

### § 3. Services of Child.

Presumption that services rendered by adopted child are gratuitous. 133: 256.

### § 4. Descent of Property of Adopted Child.

Inheritance from adopted child. 39: 228; 118: 688; 109: 676.

Inheritance through adopted child. 39: 225; 118: 688.

### § 5. Right of Adopted Children to Inherit.

Status as heirs. 118: 684.

Extraterritorial force of adoption. 118: 685.

Retrospective operation of statutes. 118: 685.

From adopting parents. 118: 686.

From natural parents. 118: 687.

From first and second adopting parents. 118: 687.

As children and grandchildren. 118: 687.

From kindred of adopting parents. 118: 687.

From adopted child. 118: 688.

Through adopted child. 118: 688.

## ADULTERATION.

Police power to regulate. See Constitutional Law, § 7.

Of dairy products as a crime. See Criminal Law, § 1.

## ADULTERY.

Killing to prevent. See Homicide, §§ 8, 9.

Assault to prevent. See Assault and Battery, § 2.

Divorce for. See Divorce, § 4.

### § 1. Offense of Living in Open and Notorious Adultery.

Object of statutes prohibiting. 113: 271.

Necessity that relation be open and notorious. 113: 272.

Materiality of question whether parties profess to be married. 113: 273.

Effect of honest though mistaken belief of parties that they are married. 113: 273.

What constitutes "living together" or "cohabitation" within the meaning of the statute. 113: 273.

### ADVANCED BIDS.

Opening judicial sale for. See Judicial Sales, § 7.

### ADVANCEMENT.

Ademption of legacy by. See Wills, § 51.

### ADVANCES.

Validity of mortgage to secure. See Mortgages, § 5.

### ADVERSE INTEREST.

As affecting validity of acts of officers and dealings between fiduciaries. See references under Personal Interest.

Entitling party to appeal. See Appeal and Error, § 2.

### ADVERSE POSSESSION.

PUBLIC PROPERTY, § 1.

LANDS DEVOTED TO PUBLIC USE, § 2.

BY AND AGAINST WHOM TITLE MAY BE ACQUIRED, § 3.

— BY TENANT IN COMMON, § 4.

ADVERSE ENTRY, § 5.

NOTORIETY ESSENTIAL, § 6.

INTERRUPTION OF POSSESSION, § 7.

COLOR OF TITLE, § 8.

REQUISITES OF COLOR OF TITLE, § 9.

INSTRUMENTS CONSTITUTING COLOR OF TITLE, § 10.

POSSESSION OF PART OF TRACT AS POSSESSION OF WHOLE, § 11.

POSSESSION OF SURFACE AS POSSESSION OF SEVERED MINERAL ESTATE, § 12.

EFFECT OF BAR OF STATUTE, § 13.

See, also, Limitation of Actions; Time.

Acquisition of highway by. See Highways, § 3.

Right of adverse possessor to sue to quiet title. See Quietening Title, § 1.

Right of adverse claimant to purchase and enforce tax title. See Taxation, § 15.

Title by prescription as marketable title. See Vendor and Purchaser, § 6.

Of water. See Waters and Watercourses, §§ 2-4.

#### § 1. Public Property.

The public domain. 76: 479.

Public lands of the United States. 76: 480.

— Color of title. 76: 483.

Waters on public lands. 76: 484.

Lakes, rivers, dams and docks. 76: 485.

Oyster-beds. 76: 485.

Mineral lands. 76: 485.

School lands. 76: 486.

Forfeited and escheated lands. 76: 487.

Cemetery, hospital or engine-house lot. 76: 487.

State lands. 76: 488.

Highways, streets and parks. 76: 492.

Streets, highways, parks and public places. 14: 278.

Effect of nonuser of street or highway. 14: 281.

#### § 2. Lands Devoted to Public Use.

Streets and highways. 87: 775.

Other public uses. 87: 778.

Applicability of doctrine of equitable estoppel. 87: 779.

Lands held by quasi-public corporation. 87: 780.

#### § 3. By and Against Whom Title may be Claimed.

By or against husband and wife. 18: 113-115.

#### § 4. — By Tenant in Common.

Presumption against adverse possession. 109: 609.

Possibility of ouster and adverse possession. 109: 610.

Entry not intended to be as cotenant—Under deed or other writing purporting to be for whole property. 109: 611.

— Possession adverse at its inception though not taken under conveyance in severalty. 109: 617.

Ouster after possession has been held for or with other tenants. 109: 618.

— By mere exclusive possession. 109: 620.

— Refusing to let cotenant in possession. 109: 621.

— Taking entire income. 109: 621.

— Notice of adverse possession. 109: 623-627.

#### § 5. Adverse Entry.

Possession taken and held through mistake or ignorance. 24: 388-390.



**§ 6. Notoriety Essential.**

Necessity for notoriety. 28: 158.  
 Claim of title. 28: 158.  
 Clandestine use of premises. 28: 159.  
 Acts equivalent to notice. 28: 159.  
 Acts of sufficient notoriety. 28: 160.  
 Acts not sufficiently notorious. 28: 161.

**§ 7. Interruption of Possession.**

Judgment in ejectment does not suspend running of statute in favor of possessor. 52: 647, 648.

**§ 8. Color of Title.**

Defined. 88: 702.  
 Distinguished from claim of title. 88: 703.  
 Necessity for. 88: 703.  
 Purpose and effect of. 88: 703.

**§ 9. Requisites of Color of Title.**

Validity of instrument immaterial. 88: 704.  
 Chain of title. 88: 706.  
 Necessity for writing. 88: 706.  
 — Actual possession dispenses with. 88: 707.  
 Words purporting to convey. 88: 708.  
 Certainty of description. 88: 708.  
 Seal. 88: 711.  
 Acknowledgment. 88: 711.  
 Recording. 88: 711.  
 Good faith. 88: 712.  
 — Doctrine of constructive notice. 88: 713.  
 — Actual bad faith or fraud. 88: 714.

**§ 10. Instruments Constituting Color of Title.**

Deed of grantor without title. 88: 716.  
 Deed of agent. 88: 717.  
 Deed of one tenant in common. 88: 717.  
 Deed of husband or wife. 88: 718.  
 Deed of insane person. 88: 718.  
 Deed of married woman. 88: 718.  
 Contract to convey. 88: 718.  
 Quitclaim deed. 88: 719.  
 Mortgage or deed of mortgaged property. 88: 720.  
 Homestead transfer. 88: 720.  
 Fraudulent conveyance. 88: 720.  
 Forged writing. 88: 721.  
 Devise of land. 88: 721.

Descent cast. 88: 721.  
 Dower transfer. 88: 722.  
 Judgment or decree. 88: 723.  
 Sheriff's receipt, memorandum or return. 88: 724.  
 Foreclosure deed. 88: 724.  
 Deed of executor or administrator. 88: 725.  
 Guardian's deed. 88: 725.  
 Partition deed or decree. 88: 726.  
 Tax deeds and certificates. 88: 726-729.

**§ 11. Possession of Part of Tract as Possession of the Whole.**

Possession without color of title. 125: 302.  
 Possession with color of title. 125: 304.  
 — Limitation of rule where there is an adverse possession of another part. 125: 306.  
 — Distinct tracts. 125: 306.  
 — Adjoining parcels. 125: 307.

**§ 12. Possession of Surface as Adverse Possession of Severed Mineral Estate.**

Nature of severed surface and mineral estate. 140: 951.  
 Effect of possession under deed to whole estate. 140: 953.  
 — Deeds after severance failing to except or reserve minerals. 140: 953.  
 Adverse possession commenced after severance. 140: 954.  
 Adverse possession commenced before severance. 140: 954.  
 Acts constituting adverse possession—Mere possession of surface insufficient. 140: 956.  
 Possession must be actual, hostile, open and continuous. 140: 956-959.  
 Effect of nonuser by mineral owner. 140: 964.  
 Effect of failure of mineral owner to pay taxes. 140: 968.

**§ 13. Effect of Bar of Statute.**

Personal property. 95: 671.  
 Real property—In general. 95: 672.  
 — In ejectment. 95: 675.  
 — In action to quiet title. 95: 676.  
 — Creates marketable title. 95: 677.  
 — In eminent domain proceedings. 95: 679.  
 — In trespass. 95: 679.

**ADVERTISEMENT.**

By attorneys. See Attorney and Client, § 7.  
Of auction sale. See Auctions and Auctioneers, § 6.

Personal advertisements in newspapers as evidence of conspiracy. See Conspiracy, § 5.

**ADVERTISING.**

Police power of cities to regulate. See Municipal Corporations, § 5.

**ADVICE OF COUNSEL.**

As justification for prosecution of civil or criminal action. See Malicious Prosecution, §§ 1, 2.

**ADVOCATES.**

See Attorney and Client.

**AFFECTION.**

Loss of affection as justification for breach of contract to marry. See Breach of Marriage Promise, § 1.

As consideration for deed. See Deeds, § 10.

**AFFIDAVITS.**

In proceedings against unknown owners. See Absentees, § 2.

In support of motion to dissolve attachment. See Attachment, § 5.

Affidavit of loss in action on lost instrument. See Lost Instruments, § 1.

For writ of ne exeat. See Ne Exeat, § 4.

Based on telephone communication. See Telegraphs and Telephones, § 9.

**§ 1. In General.**

Based on information communicated to affiant over the telephone.  
127: 556.

**AFFILIATIONS.**

Disqualifying jurors. See Jury, § 3.

**AFFINITY.**

Who are related by. See Descent, § 3.

Who are related by. See Incest, § 1.

Disqualifying judges. See Judges, § 1.

Presumption that services of relative are gratuitous. See Master and Servant, § 3.

**AFTER-ACQUIRED PROPERTY.**

Chattel mortgage of. See Chattel Mortgages, § 7.

Validity of mortgage of. See Mortgages, § 1.

Devise of. See Wills, § 32.

**AFTER-ACQUIRED TITLE.**

Estoppel of grantor to claim. See Estoppel, § 1.

**AFTER-BORN CHILDREN.**

Rights of. See Infants, § 10.

Provisions for in wills. See Wills, § 34.

**AFTER DEMAND.**

Limitation of actions on obligations payable on or after demand. See Limitation of Actions, § 8.

**AGE.**

Evidence admissible to prove. See Evidence, § 11.

Competency of child witness. See Witnesses, § 4.

**AGENCY.**

See Principal and Agent.

**AGREEMENT OF JURY.**

Right of court to urge jury to agree. See Trial, § 6.

**AGREEMENTS.**

See Contracts.

**AGRICULTURAL IMPLEMENTS.**

Exempt from execution. See Exemptions, § 7.

**AID SOCIETIES.**

Mutual aid societies. See Beneficial Associations.

**AIR.**

As appurtenance. See Deeds, § 16.

Easement of. See Easements, § 5.

**ALCOHOL.**

As necessary of life within meaning of anti-trust law. See Monopolies, § 1.

**ALDERMEN.**

Record of proceedings of. See Municipal Corporations, § 7.

Liability of sureties of. See Municipal Corporations, § 11.

**ALIENATION.**

Of homestead. See Homestead, § 6.

Rule against perpetuities. See Perpetuities, § 1.

Alienability of settler's rights on public lands. See Public Lands, § 3.

**ALIENATION OF AFFECTIONS.**

Wife's action for. See Husband and Wife, § 32.

**ALIENS.**

Jurisdiction of courts over. See Courts, § 1.

Rights of abandoned alien wife. See Husband and Wife, § 11.

Striking out answer of alien enemy. See Pleading, § 4.

**ALIMONY.**

See Divorce, §§ 9-11.

Nonpayment as contempt. See Contempt, § 2.  
Marriage as prerequisite to. See Marriage, § 6.

On annulment of marriage. See Marriage, § 7.

**ALLONGE.**

On commercial paper. See Bills and Notes, § 10.

**ALLOWANCE.**

Of claims against counties. See Counties, § 5.  
Of claim against city. See Municipal Corporations, § 38.

**ALLUVION.**

On navigable streams and lakes. See Navigable Waters, § 6.

**ALMANAC.**

See Time.

**ALTERATION OF INSTRUMENTS**

IN GENERAL, § 1.

MATERIALITY OF ALTERATIONS, § 2.

MATERIALITY DEPENDENT ON PERSON MAKING, § 3.

TIME OF MAKING AND INTENT OF PARTIES, § 4.

EFFECT UPON RIGHTS OF PARTIES, § 5.  
PRESUMPTIONS AND BURDEN OF PROOF, § 6.

Alteration of check after certification. See Banks and Banking, § 5.

Rights and remedies on payment of altered check. See Banks and Banking, § 10.

Rights of holders of altered negotiable instruments. See Bills and Notes, § 5.

Of officer's bonds. See Officers, § 17.

Discharge of surety by alteration of contract. See Principal and Surety, § 9.

**§ 1. In General.**

General rule. 86: 82.

Reasons for the rule. 86: 83.

Origin and growth of doctrine. 86: 83.

Ratification of alteration. 86: 126.

Province of court and jury. 86: 127.

**§ 2. Materiality of Alterations.**

Necessity that alteration be material. 86: 84.

Test of materiality. 86: 86.

Actual injury unnecessary. 86: 87.

Possible benefit or injury immaterial. 86: 87.

Addition or erasure of terms supplied by law. 86: 87.

Addition or erasure of terms supplied by construction. 86: 88.

Change of name of grantee or payee. 86: 88.

Change of name of maker or drawer. 86: 89.

Erasure of descriptive matter. 86: 89.

Erasure of name of principal obligor. 86: 90.

Erasure of name of secondary obligor. 86: 90.

Addition of parties generally. 86: 91.

Addition of maker after sureties sign. 86: 92.

Addition of surety. 86: 92.

Addition of maker, materiality as to comaker. 86: 94.

Addition of attesting witness. 86: 94.

Alteration of negotiability. 86: 95.

Alteration of amount. 86: 96.

Interest clause. 86: 96.

Time of payment. 86: 97.

Place of payment. 86: 98.

Medium of payment. 86: 99.

Addition of waiver of indorsement. 86: 99.

Alteration of serial numbers. 86: 100.

Memoranda. 86: 100.

Subject matter. 86: 101.

Effect of consent of party setting up alteration. 86: 192.

**§ 3. Materiality Dependent on Person Making.**

Stranger to the instrument. 86: 102.

Special agent of holder. 86: 105.

Person pecuniarily interested. 86: 105.

Thief. 86: 105.

Public officer. 86: 105.

Implied authority of holder or maker. 86: 104, 106, 107.

Co-obligor. 86: 107.

Excess of authority to fill blanks. 86: 109, 111.

**§ 4. Time of Making and Intent of Parties.**

Before execution. 86: 112.

Before delivery of accommodation paper. 86: 113.

Intent. 86: 114.

— Addition of memoranda. 86: 115.

— Accidental alterations. 86: 116.

— To correct mistake or conform instrument to intent of parties. 86: 116.

**§ 5. Effect upon Rights of Parties.**

General rule. 86: 117.

Where instrument is in duplicate. 86: 118.

Where instrument is restored to original condition. 86: 118.

When negligence of maker facilitated alteration. 86: 119.

Rights of bona fide purchaser. 86: 121.

Right of action on original contract. 86: 122.

Effect on mortgage of alteration of note. 86: 123.

Right to recover money paid on altered instrument. 86: 123.

Upon title vested by conveyance. 86: 124.

Upon executory covenants in deed. 86: 125.

Upon deed as evidence of title or collateral fact. 86: 125.

#### § 6. Presumptions and Burden of Proof.

Where alteration is not apparent. 86: 128.

Where alteration is apparent. 86: 129.  
As to party making alteration. 86: 134.

#### ALTERNATIVE WRIT.

Of prohibition. See Prohibition, § 7.

#### AMALGAMATION.

Of corporations distinguished from consolidation. See Corporations, § 60.

#### AMBASSADORS AND CONSULS.

Exemption from civil process. See Process, § 4.

#### AMBIGUITIES.

In election ballots. See Elections, § 6.

#### AMENDMENT.

Of by-laws of beneficial associations and its effect on existing members. See Beneficial Associations, § 6.

To state constitution. See Constitutional Law, § 1.

Of writ of execution. See Execution, § 2.

Of claims against estates of decedents. See Executors and Administrators, § 18.

Of records of meetings of cities, towns or school districts. See Municipal Corporations, § 7.

Stating new cause of action. See Pleading, § 2.

Constitutionality of code amendments. See Statutes, § 3.

#### AMOTION.

See reference under Removal.

#### AMOUNT IN CONTROVERSY.

Method of determining. See Courts, § 3.

#### AMUSEMENTS.

See Theaters and Shows.

#### ANCESTORS.

See Descent.

#### ANCHOR.

Duty of officers of vessel at anchor. See Collision, § 1.

#### ANCIENT BOUNDARIES.

See Boundaries, § 1.

#### ANCIENT DEEDS.

As evidence. See Evidence, § 19.

#### ANIMALS.

CLASSIFICATION, § 1.

PROPERTY IN DOGS AND ITS ENFORCEMENT, § 2.

BEEES, § 3.

ESTRAYS, § 4.

RUNNING AT LARGE, § 5.

SUMMARY IMPOUNDING AND SALE, § 6.

QUARANTINE, § 7.

SAME, § 8.

INJURIES BY ANIMALS, § 9.

PROXIMATE CAUSE OF INJURIES BY OR TO ANIMALS, § 10.

Running at large may be declared a crime. See Criminal Law, § 1.

Trespass due to defects in partition fences. See Fences, § 1.

Regulation and protection of wild animals. See Game, § 1.

Liability for disease communicated from sale of diseased animals. See Health, § 1.

Use of highway by objects tending to frighten animals. See Highways, §§ 7, 8.

Right to graze cattle in highways. See Highways, § 4.

Enjoining grazing or roaming of cattle. See Injunction, § 4.

Duty of master not to provide vicious animals. See Master and Servant, § 9.

Liability of master for acts of servant frightening animals. See Master and Servant, § 31.

Frightening animals as negligence. See Negligence, § 4.

Proximate cause of injuries by or to animals. See Negligence, § 10.

Duty of railroad to animals on or near tracks. See Railroads, § 9.

Injuries from frightening animals by emission of steam from railroad engine. See Railroads, § 10.

Right to replevin hides of animals wrongfully taken. See Replevin, § 2.

Place of taxation. See Taxation, § 13.

§ 1. Classification.

Into wild and domestic. 97: 287.

**§ 2. Property in Dogs and Its Enforcement.**

At common law. 67: 288.  
 American rule. 67: 289, 290.  
 Remedies of owner. 67: 291.  
 Justification for killing or injuring. 67: 293.  
 — Dogs killing or worrying sheep. 67: 295.  
 Liability of railroads for killing dogs. 67: 295.  
 Larceny of dog. 67: 297.  
 State police power over dogs. 67: 298.  
 Killing unlicensed dogs. 67: 298.

**§ 3. Bees.**

Liability of owner for injuries inflicted by. 97: 290.  
 Bees as a nuisance. 97: 291.

**§ 4. Estrays.**

General features of estray laws in the United States. 8: 871-873.

**§ 5. Running at Large.**

Common-law rule as to trespassing animals. 81: 446.  
 Rule that stock must be fenced out. 81: 447.  
 Cattle ranging over uninclosed land. 81: 447.  
 Herding cattle on uninclosed land. 81: 449.

**§ 6. Summary Impounding and Sale.**

Right to distrain animals at large or damaging property. 90: 212.  
 Sale of impounded animals. 90: 212.  
 Destruction of dogs as invasion of private property and deprivation of due process of law. 90: 214-216.  
 Disposition of animals at large—Power of cities. 90: 216.  
 — Law to be strictly followed. 90: 217.  
 — Due process of law. 90: 217.  
 — Notice of sale. 90: 218.  
 — Status of nonresident owners. 90: 220.

**§ 7. Quarantine.**

National regulations. 47: 533.  
 State laws and regulations. 47: 536.  
 Municipal regulations. 47: 540.  
 Liability for spreading contagion. 47: 549, 550.

**§ 8. Same.**

Constitutionality of quarantine laws. 97: 242.  
 Federal and state statutes. 97: 247.  
 Sanitary boards and commissions. 97: 247.  
 Construction of statutes. 97: 249.  
 Jurisdiction to enforce. 97: 249.  
 Expense of quarantine. 97: 249.

**§ 9. Injuries by Animals.**

Vicious dogs. 16: 631.  
 Other vicious animals. 16: 632.  
 Knowledge of vicious disposition. 16: 632.  
 — Knowledge of servant or agent. 16: 632.  
 Liability of owner for injuries inflicted on man or beast. 97: 287-289.

**§ 10. Proximate Cause of Injuries to Animals.**

Deterioration in value of animals. 36: 831.  
 As determined by habits and instincts. 36: 831.  
 Consequences of frightening animals. 36: 832.  
 Attacks on human beings or other animals. 36: 834.  
 Propensity of animals to seek food. 36: 835.

**ANNOYANCES.**

See Nuisances.

**ANNULMENT.**

Of adoption. See Adoption, § 1.  
 Of contracts, conveyances and other writings in equity. See Cancellation of Instruments.  
 Of marriage. See Marriage, § 8.

**ANOTHER ACTION PENDING.**

As ground for abatement. See Abatement and Revival, § 1.

**ANSWER.**

See Pleading.

**ANTECEDENT DEBTS.**

Liability of homestead for. See Homestead, § 3.

**ANTENUPTIAL AGREEMENTS.**

In fraud of creditors. See Fraudulent Conveyances, § 7.

**ANTENUPTIAL SETTLEMENTS.**

Right of creditors to attack. See Husband and Wife, § 3.

**ANTICIPATED CONTROVERSY.**

Validity of agreement to submit anticipated controversy to arbitrators. See Arbitration and Award, § 1.

**ANTICIPATED INJURY.**

Fear of injury as element of damages. See Damages, § 7.

**ANTICIPATION OF DEATH.**

Necessary to gift causa mortis. See Gifts, § 3.

**ANTI-POLYGAMY LAW.**

Edmund's law. See Bigamy, § 1.

**ANTI-TRUST LAWS.**

Contracts and combinations violating. See Monopolies, § 1.

**APIARY.**

As a nuisance. See Animals, § 2.

**APOTHECARIES.**

Liability for negligence. See Druggists, § 1.

**APPAREL.**

Exempt from execution. See Exemptions, § 4.

**APPARENT AUTHORITY.**

Principal bound by apparent authority of agent. See Principal and Agent, § 14.

**APPEAL AND ERROR.**

IN GENERAL, § 1.

WHO ARE INTERESTED OR INJURED PARTIES, § 2.

RIGHT TO APPEAL FROM SATISFIED JUDGMENT, § 3.

LIABILITY OF SURETIES ON APPEAL BONDS, § 4.

REVERSAL—GROUNDS, § 5.

EFFECT OF REVERSAL, § 6.

RESTITUTION ON REVERSAL, § 7.

RESTITUTION WHERE PROPERTY HAS BEEN TRANSFERRED, § 8.

PROCEEDINGS FOR RESTITUTION, § 9.

Review of order dissolving or refusing to dissolve attachment. See Attachment, § 5.  
To review contempt proceedings. See Contempt, § 5.

Review of proceedings of state corporation commission of Oklahoma. See Corporations, § 7.

Writs of error coram nobis and coram vobis. See Judgment, § 12.

Effect of appeal on lis pendens. See Lis Pendens, § 1.

Mandamus to compel allowance of appeal. See Mandamus, § 6.

**§ 1. In General.**

Review of proceedings of corporation commission of Oklahoma. 138: 1009-1011.

**§ 2. Who are Interested or Injured Parties.**

Statutory rules. 119: 741.

Nature of interest. 119: 743.

Effect of disclaimer and dismissal. 119: 744.

Nominal parties. 119: 745.

Determination of appellant's interest. 119: 745.

Necessity that appellant be prejudiced. 119: 747.

Prevailing parties. 119: 748.

Deprivation of right. 119: 750.

Claimants as appellants. 119: 751.

Garnishees. 119: 751.

Corporations. 119: 751.

Sureties. 119: 752.

Creditors. 119: 754.

Administrators. 119: 754.

Executors. 119: 755.

Heirs. 119: 756.

Guardian and next friend. 119: 756.

Assignee in insolvency. 119: 756.

Trustees. 119: 757.

Receivers. 119: 757.

Attorneys. 119: 758.

Officer of board of trade. 119: 758.

Persons not parties in lower court. 119: 759-761.

**§ 3. Right to Appeal from Satisfied Judgment.**

Right of plaintiff. 45: 271.

Right of defendant. 45: 272.

**§ 4. Liability of Sureties on Appeal Bonds.**

Strict construction of contract of sureties. 38: 702.

Defective execution of bond. 38: 704.

— Deviation from statutory language. 38: 704.

"Prosecuting with effect" construed. 38: 706.

What judgment sureties contract to satisfy. 38: 706.

Dismissal of appeal equivalent to affirmation. 38: 708.

Effect of reversal of judgment. 38: 709.

Effect of change of parties pending appeal. 38: 710.

Effect of fraud or mistake. 38: 710.

Effect of legislation subsequent to execution of bond. 38: 711.  
 Effect of discharge of judgment debtor in bankruptcy. 38: 711.  
 Effect of acts of parties to the appeal. 38: 711.  
 — Delay in prosecuting appeal. 38: 712.  
 — Giving additional security. 38: 712.  
 Liability commensurate with that of principal. 38: 712.  
 Death of surety and liability of survivor. 38: 713.  
 Performance of one condition no defense to breach of another. 38: 713.  
 Proceedings for enforcement. 38: 714.  
 Amount recoverable. 38: 715, 717.  
 Pleading and practice. 38: 718.  
 Judgment against principal concludes sureties. 38: 719.  
 Liability of sureties on defective bonds or undertakings. 67: 197–204.

#### § 5. Reversal—Grounds.

Remarks and conduct of counsel. 100: 695.

#### § 6. Effect of Reversal.

What is reversal. 96: 125.  
 Includes every part of judgment. 96: 127.  
 Limited to parties before the court. 96: 127.  
 General rule as to effect of reversal. 96: 128.  
 Places parties in statu quo. 96: 128.  
 Reversal of reversal. 96: 130.  
 Annuls all proceedings and orders founded on it, and all judgments which cannot stand without denying it. 96: 130.  
 Terminates effect as res adjudicata or merger. 96: 132.  
 Limitation on effect of reversal. 96: 133.  
 Loss of title where no sale or conveyance has been made under the judgment. 96: 134.

#### § 7. Restitution on Reversal.

Restitution of persons dispossessed under a judgment subsequently reversed. 17: 264–266.

#### § 8. Restitution Where Property has been Transferred.

Where stranger purchased at sale. 96: 136.  
 Where judgment plaintiff purchased. 96: 137.  
 Where assignee or others beneficially interested purchased. 96: 139.  
 Where plaintiff's attorney purchased. 96: 140.  
 Where purchasing plaintiff has transferred the bid or property to another. 96: 140.  
 Whether title remains in purchasing plaintiff until defendant elects to disaffirm it. 96: 141.

#### § 9. Proceedings for Restitution.

Right to restitution always implied. 96: 141.  
 Order for restitution in appellate court. 96: 142.  
 Proceedings in trial court. 96: 142.  
 Enforcing restitution by independent suit. 96: 143.  
 Payment of reversed judgment as defense. 96: 143.  
 Restitution by appellant who has collected judgment. 96: 143.  
 Statute of limitations. 96: 144.  
 Discretion to refuse restitution. 96: 144.  
 Amount of recovery. 96: 145.

### APPEAL BONDS.

Liability of sureties on. See Appeal and Error, § 4.

### APPEARANCE.

Voluntary appearance of absent citizens as conferring jurisdiction. See Absentees, § 1.

Vacating judgment because of unauthorized appearance. See Judgment, § 15.

#### § 1. Authority to Appear.

In general. 126: 33.  
 Who may question. 126: 35.  
 Waiver of right to question. 126: 36.  
 Authority as question for jury. 126: 38.  
 Presumption of authority. 126: 39.  
 Burden of attacking. 126: 41.  
 Methods of attacking. 126: 43.  
 Cannot be first questioned on appeal. 126: 45.

**APPLAUSE.**

Of spectators during trial as ground for setting aside verdict. See Criminal Law, § 48.

**APPLIANCES.**

Liability of master for injury to servant from defective appliances. See Master and Servant, §§ 8-25.

**APPLICATION.**

For insurance. See Insurance, §§ 19-21.  
For writ of ne exeat. See Ne Exeat, § 4.  
Of firm assets to liabilities. See Partnership, § 18.  
Of payments. See Payment, §§ 5-11.  
For writ of prohibition. See Prohibition, § 6.  
For subpoena duces tecum. See Witnesses, § 3.

**APPOINTMENT.**

Of nonresident as administrator or executor. See Executors and Administrators, § 1.  
Of administrator de bonis non. See Executors and Administrators, § 24.  
Under civil service laws. See Municipal Corporations, § 9.  
Of receivers. See Receivers, § 1.

**APPORTIONMENT.**

Of legislative districts as legislative function. See Constitutional Law, § 3.  
Of debts on severance and annexation of counties. See Counties, § 2.  
Of accretions on navigable waters. See Navigable Waters, § 8.  
Of loss between cosureties. See Principal and Surety, § 3.  
Legislative apportionment. See States, §§ 3, 4.  
Of accretions on non-navigable waters. See Waters and Watercourses, § 6.

**APPRENTICESHIP.**

Capacity of infant to enter into contract of. See Infants, § 1.

**APPURTENANCES.**

See Deeds, § 16.

**APPURTENANT EASEMENT.**

See Easements, § 4.

**ARBITRARY TESTS.**

What are. See Constitutional Law, § 21.

**ARBITRARY WORDS.**

As trademarks. See Trademarks and Trade Names, § 2.

**ARBITRATION AND AWARD.**

Applicability of statute of frauds to submission contracts. See Frauds, Statute of, § 3.

Power of guardian to submit to arbitration. See Guardian and Ward, § 6.  
Validity of agreement to submit insured loss to. See Insurance, § 39.

**§ 1. Agreements to Arbitrate.**

Validity of agreement to submit future disputes to arbitration. 2: 566-571.

**§ 2. Revocation of Agreement to Arbitrate.**

Right to revoke. 138: 640.  
Effect of agreement not to revoke. 138: 643.  
After award is made. 138: 643.  
After submission but before award. 138: 644.  
In case of submission by order of court. 138: 645.  
Authority of corporate officer to revoke. 138: 645.  
What constitutes express revocation. 138: 646.  
What constitutes implied revocation. 138: 646.  
— Death of party. 138: 646.  
— Death of arbitrator or refusal to act. 138: 647.  
— Marriage of female. 138: 647.  
— Commencement of suit. 138: 648.  
Effect and waiver of revocation. 138: 648, 649.

**§ 3. Award.**

Validity. 14: 518.  
Conclusiveness. 14: 518.  
Impeachment. 14: 518.  
Setting aside. 14: 518.

**ARCHITECT.**

Certificate of architect that contract has been performed. See Contracts, § 20.  
Right to mechanic's lien. See Mechanics' Liens, § 2.

**ARGUMENT OF COUNSEL.**

Presence of judge during argument. See Criminal Law, § 44.  
Limitations on. See Criminal Law, § 45.  
Of prosecutor. See Criminal Law, § 46.  
Misconduct in. See Criminal Law, § 47.  
At civil trials. See Trial, § 2.  
Misconduct in argument warranting reversal of judgment. See Trial, § 3.

**ARMS.**

Right to keep and carry arms. See Weapons, § 1.



**ARMY AND NAVY.**

Crime of soldier coerced by officer. See Criminal Law, § 6.

**§ 1. Power of Legislature to Confer Benefits on Soldiers for Past Service.**

Exemption from license tax. 117: 890.  
Benefits and preferment for public office. 117: 893.

**ARRAY.**

Challenge to array of grand jurors. See Grand Jury, § 1.

**ARREARS.**

On preferred stock. See Corporations, § 19.

**ARREST.**

Of fugitive from another state before demand. See Extradition, § 8.  
False arrest. See False Imprisonment.  
Proceedings to prevent debtors from leaving or removing their property from jurisdiction. See *Ne Exeat*, §§ 1-4.  
Of vagrant without warrant. See Vagrant, § 5.

**§ 1. Right of Policemen to Arrest.**

Who are policemen. 84: 680.  
Under warrant. 84: 681.  
Without warrant—At common law. 84: 682.  
— Under statute. 84: 682.  
— For felony. 84: 683.  
— Suspicion of felony. 84: 684.  
— Breach of peace in presence of officer. 84: 687.  
— Breach of peace not in presence of officer. 84: 687.  
— Misdemeanor in officer's presence. 84: 688.  
— Suspicion of misdemeanor. 84: 689.  
— Violation of city ordinance. 84: 690.  
— Past offenses. 84: 692.  
— Night-walkers, prowlers and suspicious characters. 84: 695.  
Place where arrest may be made. 84: 695.  
Making known official character. 84: 696.  
Force policeman may use. 84: 696.  
**§ 2. Right to Resist Arrest.**  
Under warrant. 84: 697.  
Without warrant—Lawful arrest. 84: 698.  
— Arrest for felony. 84: 698.

— Arrest for misdemeanor. 84: 699.

Innocence gives no right. 84: 700.  
Force used in resisting. 84: 700.  
Officer making known his character. 84: 701.

**§ 3. Statutes Violating Prohibitions Against Imprisonment for Debt.**

Meaning of "debt" as used in constitution. 37: 758.  
Debts arising from contract protected. 37: 758.  
Debts arising from fraud not protected. 37: 758.  
Debts arising from tort not protected. 37: 760.  
Prohibition not applicable to fines. 37: 761.  
Prohibition not applicable to costs in criminal cases. 37: 761.  
Obligation of father to support bastard. 37: 762.  
Effect of reduction of debt to judgment. 37: 762.  
Imprisonment for contempt of court. 37: 763.  
Discharge from imprisonment. 37: 764.

**ARSON.**

Burning property other than buildings and civil liability for setting out fires and preventing extinguishment of fire. See Fires, § 1.  
Resulting in death of human being as homicide. See Homicide, § 10.

**§ 1. Nature and Elements of Offense.**

Definition. 101: 22; 71: 266.  
Malice. 101: 22.  
Burning. 101: 23.  
Burning jail to escape. 101: 24.  
Burning by tenant in possession. 101: 25.  
Burning by owner of house. 101: 26.  
Burning by husband or wife. 101: 27.  
Defenses. 101: 28.  
Attempts to commit. 101: 28.

**§ 2. What Constitutes a House.**

General definition. 71: 266.  
Building capable of affording shelter to persons. 71: 267.  
Schoolhouse and engine-house. 71: 267, 268.  
Warehouse, barrel-house and jail. 71: 267.  
Uncompleted building. 71: 267.

Sawmill. 71: 267.  
 Demolished building. 71: 268.  
 Stable, corn-crib and cotton-house.  
 71: 268.  
 Store and mill-house. 71: 268.

### ART.

Judicial notice of. See Evidence, § 1.

### ARTICLES OF INCORPORATION.

Effect of failure of incorporators to sign, omission to state corporate name and object, and failure to file. See Corporations, § 1.

### ASPORTATION.

As element of larceny. See Larceny, § 1.  
 As element of robbery. See Robbery, § 3.

### ASSAULT AND BATTERY.

Duty of carrier to protect passenger from. See Carriers, § 49.  
 Liability of saloon-keeper for assault by drunkard. See Intoxicating Liquor, § 2.

#### § 1. In General.

In defense of wife's chastity. 132: 697.

#### § 2. To Prevent Adultery.

In flagrante delicto. 132: 695.  
 Past adultery. 132: 696.  
 The discovery. 132: 696.

### ASSAY.

Effect of assays in ascertaining whether there was a discovery of mineral. See Mines and Minerals, § 2.

### ASSESSMENT.

Of corporate stockholders. See Corporations, § 18.  
 Duty of life tenant to pay local improvement assessments. See Life Estates, § 4.  
 For local improvements. See Municipal Corporations, §§ 16-20.

### ASSESSMENT WORK.

Performance of assessment work on mining claims. See Mines and Minerals, § 9.

### ASSETS.

Sale of entire assets of corporation. See Corporations, § 52.

### ASSIGNMENTS.

RIGHT TO PROHIBIT ASSIGNMENT OF ASSIGNABLE CONTRACT, § 1.  
 PROPERTY SUBJECT TO, § 2.  
 EXPECTANCIES OR POSSIBILITIES, § 3.  
 PRIORITY BETWEEN ASSIGNEES, § 4.

Of agreement to pay debt discharged by bankruptcy. See Bankruptcy, § 2.  
 Bank check as assignment of fraud. See Banks and Banking, § 3.  
 Of certificate of membership in mutual aid society. See Beneficial Associations, § 4.  
 Of benefit in mutual aid society. See Beneficial Associations, § 8.  
 Of bill of lading. See Carriers, §§ 8, 9.  
 Of deed. See Deeds, § 9.  
 Of dower. See Dower, § 3.  
 Of right of fishery. See Fish, § 2.  
 Of goodwill. See Goodwill, § 1.  
 Of choses in action of ward. See Guardian and Ward, § 5.  
 Of insurance policy. See Insurance, §§ 13-18.  
 Of judgment. See Judgment, § 48.  
 Of lease. See Landlord and Tenant, § 15.  
 Of mechanic's lien. See Mechanics' Liens, § 6.  
 Reformation of. See Reformation of Instruments, § 1.  
 Distinguished from sale. See Sales, § 1.  
 Of trademark or name. See Trademarks and Trade Names, § 4.  
 Of option to purchase land. See Vendor and Purchaser, § 3.

#### § 1. Right to Prohibit Assignment of Assignable Contract.

In general. 88: 201.  
 Assignment in violation of prohibition. 88: 204.  
 Waiver of right to object to assignment. 88: 205.  
 Rights of assignee as against assignor. 88: 205.  
 Who may insist on prohibition. 88: 205.  
 Assignment as collateral security. 88: 206.  
 Involuntary transfers. 88: 206.

#### § 2. Property Subject to.

Part of a demand. 2: 472-475.  
 Future earnings. 2: 473.  
 Part of fund. 28: 745, 746.

#### § 3. — Expectancies or Possibilities.

Expectancy defined. 56: 339.  
 Possibility defined. 56: 340.  
 Bare possibility. 56: 340.  
 Hope of gift. 56: 341.  
 Invalid at law. 56: 342.  
 Valid in equity. 56: 343.  
 — Illustrations. 56: 347.  
 Setting aside in equity. 56: 348.  
 Assent of ancestor. 56: 350.  
 Warranty and estoppel. 56: 351.  
 Consideration. 56: 354.  
 Property passing. 56: 359.  
 Possibilities coupled with an interest. 56: 360.

**§ 4. Priority Between Assignees.**

First in time prevails. 71: 31.  
Effect of first giving notice of indorsement. 71: 31-36.

**ASSIGNMENTS FOR BENEFIT OF CREDITORS.**

**§ 1. Validity of Assignment.**

Defects in inventories and schedules. 2: 24.  
Omission of property from schedule. 2: 24.  
Reservation of property by debtor. 2: 24.  
Provision for payment of attorney's fees. 2: 25.  
Failure of assignee to give bond. 2: 25.  
Provision that assignee need not give bond. 2: 25.  
Fictitious claims. 2: 26.  
Who may question. 2: 26.

**§ 2. Effect of Fraud on the Assignment.**

Good faith a prerequisite to valid assignment. 58: 74.  
Failure to comply with statute. 58: 74, 75.  
Violation of statute. 58: 76.  
Assignment authorizing sale on credit. 58: 77.  
Illegal reservations. 58: 78.  
Withholding property. 58: 81.  
Excessive powers or immunities to assignee. 58: 83.  
Conditional assignments. 58: 83.  
Intent to hinder or defraud creditors. 58: 84.  
Exacting releases. 58: 85.  
Preferences to creditors. 58: 86.  
Conflict of laws. 58: 92.  
Determination and proof of fraud. 58: 93.  
Effect of fraud. 58: 95.  
Effect of partial invalidity for fraud. 58: 99.  
Fraudulent transfers prior to assignment. 58: 100.

**§ 3. Assignee's Sale.**

Right of assignee to purchase at sale of debtor's property. 136: 812.

**ASSISTANCE, WRIT OF.**

**§ 1. Equity Jurisdiction to Issue.**

In general. 93: 154.  
Against whom exercised. 93: 157.

Use of writ in equity. 93: 159.  
When writ will issue. 93: 161.  
In whose favor writ may issue. 93: 162.  
Against whom writ may issue. 93: 163-165.

**ASSISTING PASSENGERS.**

Duty and care required of carrier toward persons assisting passengers. See Carriers, § 33.

**ASSOCIATIONS.**

**VOLUNTARY ASSOCIATIONS, § 1.**  
**POWER TO EXPEL MEMBERS, § 2.**  
**RIGHT OF MEMBERS TO RESORT TO COURTS, § 3.**  
**EQUITY JURISDICTION OVER, § 4.**  
See, also, Beneficial Associations; Partnership; Religious Societies; Trade Unions.

**§ 1. Voluntary Associations.**

Defined. 7: 160.  
Legal nature and status. 7: 161.  
Jurisdiction of courts over. 7: 162; 68: 856.  
Power of courts to review expulsion of members. 7: 166.  
Power of courts to protect property rights of members. 7: 168.  
Power of courts to dissolve. 7: 170; 68: 871.

**§ 2. Power to Expel Members.**

Implied power. 114: 25.  
Delegation of power to committee. 114: 26.  
Adoption of rules governing. 114: 26.  
Notice and opportunity to defend. 114: 27.  
Grounds—In general. 114: 27.  
— Hostility to association. 114: 27.  
— Defamation of association or member. 114: 28.  
— Disorderly and ungentlemanly conduct. 114: 29.  
— Questionable business practices and breach of contract. 114: 29.  
— Engaging in liquor business. 114: 30.

**§ 3. Right of Members to Resort to Courts.**

In general. 18: 301.  
To enforce privileges or benefits to which their membership entitles them. 59: 198.

Injunction. 59: 198.  
 Mandamus. 59: 200.  
 Actions to recover money or property.  
 59: 203.  
 Decision of tribunal of association as  
 res adjudicata. 59: 204.

#### § 4. Equity Jurisdiction Over.

In general. 68: 856.  
 To prevent unlawful suspension or ex-  
 pulsion. 68: 857.  
 To compel admission to membership.  
 68: 857.  
 To reinstate member. 68: 858.  
 Accounting. 68: 859.  
 Benefit and benevolent societies. 68:  
 859.  
 Boards of brokers or boards of trade.  
 68: 860.  
 Building and loan associations. 68:  
 860.  
 Clubs and committees. 68: 861.  
 Exchanges. 68: 862.  
 Fire companies. 68: 863.  
 Association without legal status. 68:  
 863.  
 Joint stock companies. 68: 863.  
 Lodges. 68: 863.  
 Oneida community. 68: 864.  
 Religious societies. 68: 864.  
 Labor or trade unions. 68: 869.  
 Civil or property right must be in-  
 volved. 68: 869.  
 Contribution and specific performance.  
 68: 871.  
 Adequate remedy at law. 68: 871.  
 Dissolution of association. 68: 871.  
 Parties to proceedings. 68: 871.

#### ASSUMED NAMES.

See Names, § 3.

Deposit in assumed name. See Banks and  
 Banking, § 4.  
 Execution of deed in assumed name. See  
 Deeds, § 4.

#### ASSUMING FACTS.

In argument to jury. See Trial, § 3.  
 In instructions. See Trial, § 5.

#### ASSUMPSIT.

Implied liability to pay the balance of an ac-  
 count rendered or stated between parties  
 and admitted to be due. See Account  
 Stated, § 1.  
 Right to waive tort and sue in assumpsit.  
 See Election of Remedies, § 2.  
 Against trespasser. See Use and Occupation,  
 § 1.

#### § 1. In General.

Benefit to defendant as basis of right to  
 maintain, in cases of tort. 134:  
 196.  
 Form of action for recovery upon sub-  
 stantial performance of a build-  
 ing contract. 134: 693-696.  
 Presumption that services rendered by  
 relatives are gratuitous. 133:  
 250.

#### ASSUMPTION OF RISK.

By shipper of livestock. See Carriers, § 32.  
 By servants in general. See Master and Ser-  
 vant, § 21.  
 By servants in mines. See Master and Ser-  
 vant, § 22.  
 By accepting extrahazardous work. See Mas-  
 ter and Servant, § 24.

#### ASSURANCE.

See Insurance.

#### ATTACHMENT.

IN GENERAL, § 1.  
 PROPERTY SUBJECT TO ATTACHMENT,  
 § 2.  
 — SHARES OF CORPORATE STOCK,  
 § 3.  
 VARIANCE IN PROCEEDINGS TO OB-  
 TAIN, § 4.  
 PROCEEDINGS ON MOTION TO DIS-  
 SOLVE, § 5.  
 DISSOLUTION, § 6.  
 DAMAGES FOR WRONGFUL OR MALI-  
 CIOUS ATTACHMENT, § 7.  
 Pendency of other proceedings as ground for  
 abatement. See Abatement and Revival,  
 § 1.  
 Of funds in bank represented by outstanding  
 certified check. See Banks and Banking,  
 § 5.  
 Creditor's bill to enforce attachment lien.  
 See Creditors' Suits, § 1.  
 Malicious attachment. See Malicious Prose-  
 cution, § 1.  
 Exemption of earnings of officers. See Of-  
 ficers, § 11.  
 Intervention in. See Parties, § 3.  
 Indemnity to officer before levy. See Sheriffs  
 and Constables, § 2.

#### § 1. In General.

Sufficiency of return. 20: 808.  
 Defects in proceedings where jurisdic-  
 tion depends on attachment  
 alone which will avoid the judg-  
 ment. 76: 800.

#### § 2. Property Subject to Attachment.

Foreign railroad cars. 104: 663.

**§ 3. — Shares of Corporate Stock.**

Only when allowed by statute. 52: 474.  
 Outside of state where located. 52: 474.  
 Stock of foreign corporation not subject to attachment. 52: 474, 475.

**§ 4. Variance in Proceedings to Obtain.**

Materiality. 107: 894.  
 Discrepancy in names of parties. 107: 895.  
 Discrepancy in causes of action or ground for attachment. 107: 896.  
 Inconsistency as to amount of claim or demand. 107: 897.  
 Inconsistency as to maturity of debt. 107: 898.  
 Manner of taking advantage of variance. 107: 898.

**§ 5. Proceedings on Motion to Dissolve.**

Sufficiency of application. 123: 1053.  
 Verification of application. 123: 1055.  
 Notice of motion. 123: 1055.  
 Affidavits in support of motion. 123: 1057.  
 Issues considered. 123: 1058.  
 Evidence and effect of affidavits. 123: 1060.  
 Hearing. 123: 1063.  
 Order or judgment. 123: 1063.  
 Effect of order denying motion to dissolve. 123: 1063.  
 Appeal and error. 123: 1064–1067.

**§ 6. Dissolution.**

Grounds—In general. 123: 1030.  
 — Insufficiency or falsity of alleged grounds for attachment. 123: 1031.  
 — Insufficiency of cause of action. 123: 1034.  
 — Excessive claim. 123: 1037.  
 — Want of jurisdiction. 123: 1038.  
 — Defects and irregularities. 123: 1038.  
 — Insufficiency of affidavit. 123: 1040.  
 — Ownership or exemption of attached property. 123: 1041.  
 Proceedings to obtain. 123: 1042.  
 — For defects not apparent of record. 123: 1043.  
 Persons entitled to apply for. 123: 1044.

— Defendant. 123: 1045.  
 — Assignor for creditors. 123: 1046.  
 — Assignee for creditors. 123: 1047.  
 Estoppel or waiver of right to apply for. 123: 1047.  
 — When defendant has mortgaged the property. 123: 1048.  
 — Want of title to the property. 123: 1048.  
 — Giving bond for release. 123: 1049.  
 Persons entitled to oppose. 123: 1051.  
 Time to move for dissolution. 123: 1051.  
 — After general appearance and plea to merits. 123: 1052.

**§ 7. Damages for Wrongful or Malicious Attachment.**

Reconvention for damages. 68: 266.  
 General rule. 68: 267.  
 Merely wrongful attachment. 68: 268.  
 Elements of damages. 68: 270.  
 — Loss of profits or credit. 68: 272, 279.  
 — Mental suffering. 68: 272.  
 — Attorneys' fees. 68: 273.  
 — Expenses. 68: 274.  
 Liability of principal for suit by agent. 68: 275.  
 Mitigation of damages. 68: 276.  
 Exemplary damages for malicious attachment. 68: 277.

**ATTEMPT.**

To commit arson. See Arson, § 1.  
 To bribe. See Bribery, § 1.  
 To commit crime. See Criminal Law, § 4.  
 To make a will as nuncupative will. See Wills, § 10.

**ATTESTATION.**

Of chattel mortgage. See Chattel Mortgages, § 2.  
 Of wills. See Wills, § 5.  
 Of holographic will. See Wills, § 9.

**ATTESTING WITNESS.**

Qualification of attesting witness to take acknowledgment to instrument attested. See Acknowledgment, § 2.

**ATTORNEY AND CLIENT.**

SUMMARY JURISDICTION OVER ATTORNEYS, § 1.  
 DISBARMENT, § 2.  
 GROUNDS FOR DISBARMENT, § 3.  
 — CRIMINAL ACTS BEFORE CONVICTION, § 4.

CONTRACTS BETWEEN, § 5.  
 CONTRACTS OF ATTORNEY AGAINST  
 PUBLIC POLICY, § 6.  
 INVALIDITY OF RETAINER SECURED  
 BY SOLICITATION, § 7.  
 IMPLIED AUTHORITY OF ATTORNEY,  
 § 8.  
 EXTENT OF CLIENT'S CONTROL OVER  
 CAUSE, § 9.  
 NOTICE TO ATTORNEY AS NOTICE TO  
 CLIENT, § 10.  
 DISABILITIES OF ATTORNEY, § 11.  
 ACCOUNTING BETWEEN, § 12.  
 COMPENSATION OF ATTORNEY, § 13.  
 RIGHT TO COMPENSATION, § 14.  
 LIEN OF ATTORNEY FOR SERVICES, § 15.

Validity of acknowledgment taken before at-  
 torney of party executing instrument. See  
 Acknowledgment, § 2.

Authority of attorney to satisfy obligations  
 by taking something different from what  
 might be legally demanded. See Accord  
 and Satisfaction, § 6.

Right of attorney to prosecute appeal. See  
 Appeal and Error, § 2.

Authority to appear in civil actions. See Ap-  
 pearance, § 1.

Disbarment proceedings as due process of law.  
 See Constitutional Law, § 23.

Vacating judgment because of unauthorized  
 appearance. See Judgment, § 15.

Vacating judgment for negligence or mistake  
 of attorney. See Judgment, §§ 17, 18.

Occupation tax on attorneys. See Licenses,  
 § 1.

Mandamus to compel reinstatement of dis-  
 barred attorney. See Mandamus, § 6.

Powers of attorney. See Principal and  
 Agent, §§ 10-12.

Exemption of attorney from civil process  
 while attending court. See Process, § 4.

Right of attorney to serve summons. See  
 Process, § 7.

Communications between attorney and client  
 which are protected from compulsory dis-  
 closure on the witness-stand. See Wit-  
 nesses, §§ 6-9.

### § 1. Summary Jurisdiction Over At- torneys.

What courts may exercise. 2: 847.  
 Due process of law. 2: 848.  
 Excess of power. 2: 848.  
 Nature of power. 2: 848.  
 Character of proceedings. 2: 848.  
 Disbarment and contempt distin-  
 guished. 2: 849.  
 Statutes construed. 2: 849.  
 Acts must be connected with profes-  
 sional conduct. 2: 849.  
 — Exceptions to the rule. 2: 850.  
 Suspension and disbarment. 2: 850.  
 Indictable offense. 2: 852.  
 — Necessity for prior conviction. 2:  
 852.  
 In matters of contempt. 2: 853.  
 In behalf of clients. 2: 854.  
 Payment of money to client. 2: 854.

— Necessity for demand. 2: 855.  
 Undertakings and agreements. 2: 855.  
 Redelivery of papers. 2: 856.  
 Costs—Gross negligence. 2: 856.  
 Adjustment of fees. 2: 857.  
 When summary jurisdiction will not be  
 exercised—Disbarment. 2: 857.  
 — Contempt. 2: 858.  
 — Payment of money. 2: 858.  
 — Delivery of papers. 2: 858.  
 — Miscellaneous. 2: 858.  
 Practice—Necessity for affidavit. 2:  
 858.  
 — When court may proceed of its  
 own motion. 2: 859.  
 — Notice and hearing. 2: 859.  
 — Title. 2: 859.  
 — Parties complainant. 2: 859.  
 — Waiver of formalities. 2: 859.  
 — Where charge should be made.  
 2: 860.  
 — Change of venue. 2: 860.  
 — Adjournment. 2: 860.  
 — Lapse of time as bar. 2: 860.  
 — Entry of judgment. 2: 860.  
 — Jury trial. 2: 860.  
 Punishment. 2: 861.  
 Commitment for contempt. 2: 861.  
 Effect of disbarment by one court on  
 right to practice in others. 2:  
 861.  
 Reinstatement of disbarred attorney.  
 2: 861.  
 Remedy against illegal or unjust exer-  
 cise of power. 2: 861.  
 Power of President of United States to  
 pardon contempt. 2: 862.

### § 2. Disbarment.

General powers of court to disbar.  
 114: 839.

### § 3. Grounds for Disbarment.

In general. 45: 71.  
 Power of courts. 45: 72.  
 Disbarment is not a punishment for  
 crime. 45: 73.  
 Acts not performed as an attorney.  
 45: 74.  
 Bad character. 45: 76.  
 Commission of crime. 45: 76.  
 — Effect of pardon or serving sen-  
 tence. 45: 77.  
 Embezzlement. 45: 78.  
 Necessity for prior conviction of crime.  
 45: 79.  
 Unprofessional conduct. 45: 81, 82.  
 Contempts and calumnies of courts and  
 judges. 45: 83.

**§ 4. — Criminal Acts Before Conviction.**

Crimes committed in professional capacity. 114: 840.  
 Other crimes—General rule. 114: 840.  
 — Exceptions to the rule. 114: 841.

**§ 5. Contracts Between.**

In general. 83: 159.  
 Construction and effect. 83: 164.  
 Recovery by attorney. 83: 164.  
 Champerty, barratry and maintenance. 83: 167.  
 For contingent fees. 83: 175.  
 As to particular services. 83: 178.  
 Compromise and contracts not to compromise. 83: 180.  
 Gifts to attorneys. 83: 182.  
 Illegal and legal contracts illustrated. 83: 182, 184.  
 General requirements in dealings between. 83: 185.

**§ 6. Contracts of Attorneys Against Public Policy.**

Contracts interfering with due enforcement of law. 13: 297.  
 Inducing evasion of civil process. 13: 297.  
 Inducing breach of official duty. 13: 297.  
 Stifling criminal prosecution. 13: 298.  
 To procure legislation. 13: 298.  
 To obtain divorce for contingent fee. 13: 299.  
 Champertous contracts. 13: 299.  
 Contracts for contingent fees. 13: 299.

**§ 7. Invalidity of Retainer Secured by Solicitation.**

Abrogation of ancient doctrine of champerty. 119: 1035.  
 Solicitation by attorney personally. 119: 1036.  
 Solicitation through another. 119: 1040.  
 Solicitation by advertising. 119: 1041.  
 Advertising to procure divorce. 119: 1041.

**§ 8. Implied Authority of Attorney.**

Commencement and conduct of action. 132: 149.  
 Control and process, writs and notices. 132: 154.  
 Stipulations and admissions. 132: 155.

Delegation of power and employment of counsel. 132: 160.  
 Incurring incidental expenses. 132: 161.  
 Continuance, dismissal or retraxit. 132: 161.  
 Confession or consent to judgment. 132: 162.  
 Waiver or surrender of client's rights. 136: 163.  
 Compromise, settlement and discharge. 132: 163.  
 Release of claim or cause of action. 132: 168.  
 Submission to arbitration. 132: 169.  
 Consent to amicable action. 132: 171.  
 Control over attachments. 132: 171.  
 Control over judgment. 132: 172.  
 Control over execution. 132: 176.  
 Control over judicial sale. 132: 178.  
 Control over appeal. 132: 180.  
 Waiver of appeal. 132: 181.

**§ 9. Extent of Client's Control of Cause.**

Exclusiveness of attorney's control. 93: 170.  
 Dismissal of suit, stipulations and motions. 93: 171.  
 Compromise and settlement. 93: 172.  
 Contract not to compromise. 93: 174.  
 Effect of statutes giving attorney a lien —Do not prevent settlement. 93: 175.  
 — Right of attorney to continue suit after settlement. 93: 175.  
 — Attorney must establish original cause of action. 93: 178.  
 — Right of defendant's attorney after settlement. 93: 179.

**§ 10. Notice to Attorney as Notice to Client.**

General rule. 57: 914.  
 Firm of attorneys. 57: 914.  
 Several attorneys each representing different departments of client's business. 57: 914.  
 Attorney representing both parties. 57: 915.  
 Knowledge acquired in other transactions. 57: 915, 916, 917.  
 Professional communications. 57: 915.  
 Fraud participated in by attorney. 57: 916.  
 Knowledge acquired previous to employment. 57: 918.

**§ 11. Disabilities of Attorney.**

Right of attorney to purchase at forced sale of client's property. 136: 813-816.

**§ 12. Accounting Between.**

When statute of limitations begins to run against client's right to compel an accounting. 136: 487.

**§ 13. Compensation of Attorney.**

In general. 16: 592.

Agreements for contingent fees. 16: 593.

Value of services. 16: 593.

Assistant counsel. 16: 593.

**§ 14. Right to Compensation.**

Ancient rule. 127: 841.

English rule. 127: 843.

American rule. 127: 844.

Extent to which English rule prevails in America. 127: 849.

**§ 15. Lien of Attorney for Services.**

Classification. 51: 251.

General lien. 51: 251.

— On papers of client. 51: 252.

— On money collected. 51: 253.

— Enforcement. 51: 255.

— Loss or extinguishment. 51: 256.

— Rule of federal courts. 51: 256.

Special or charging lien. 51: 257.

— Extent. 51: 258.

— Compromise before judgment. 51: 261.

— Collusive compromise or settlement. 51: 263.

— By agreement or assignment. 51: 265.

— Notice of lien. 51: 267.

— Setoff. 51: 268.

— Assignment of judgment. 51: 268.

— Priority between lien and bankruptcy, attachment or purchase pending suit. 51: 269.

— Lien on land. 51: 270.

— Waiver and release of lien. 51: 271.

— Enforcement of lien. 51: 271.

Statutory lien. 51: 274.

— Extent of lien. 51: 274.

— Compromise before judgment. 51: 276.

— Collusive compromise and settlement. 51: 276.

— Waiver. 51: 277.

— Setoff and priorities. 51: 279.

Lien on land. 51: 279.

— Enforcement of lien. 51: 280.

**ATTORNEY GENERAL.**

Right to contest will. See Wills, § 22.

**ATTORNEY IN FACT.**

See Principal and Agent.

Certificate of acknowledgment by. See Acknowledgment, § 4.

**ATTORNEYS' FEES.**

Compensation of attorneys and lien therefor. See Attorney and Client, §§ 13-15.

Validity of stipulation in bills and notes for. See Bills and Notes, § 2.

As costs. See Costs, § 1.

As damages. See Damages, § 8.

Liability of infant litigants for. See Infants, § 7.

**ATTORNTMENT.**

Of tenant to third person. See Landlord and Tenant, § 9.

**AUCTIONS AND AUCTIONEERS.**

DEFINITIONS, § 1.

AUTHORITY AND AGENCY OF AUCTIONEER, § 2.

RIGHTS AND LIABILITIES OF AUCTIONEER, § 3.

RIGHTS, LIABILITIES AND REMEDIES OF BUYER AND SELLER, § 4.

COMPENSATION AND LIEN OF AUCTIONEER, § 5.

CONDUCT AND VALIDITY OF SALE, § 6.

Applicability of statute of frauds to auction sales. See Frauds, Statute of, § 8.

License on occupation. See Licenses, § 1.

**§ 1. Definitions.**

Auction. 131: 479.

Auctioneer. 131: 480.

**§ 2. Authority and Agency of Auctioneer.**

Representation of seller and buyer. 131: 480.

Termination of authority. 131: 480.

Delegation of authority. 131: 482.

Written authority. 131: 482.

Authority to act for himself. 131: 482.

Authority to announce and vary terms of sale. 131: 483.

Authority to warrant. 131: 483.

Interest disqualifying auctioneer. 131: 483.



**§ 3. Rights and Liabilities of Auctioneer.**

- Right to sue for price of goods. 131: 498.  
 Liability to seller. 131: 498.  
 Liability to buyer. 131: 499.  
 Liability when principal is undisclosed. 131: 499.  
 Liability to owner of stolen goods. 131: 500.  
 Liability to garnishment. 131: 500.

**§ 4. Rights, Liabilities and Remedies of Buyer and Seller.**

- Passing of title. 131: 494.  
 Lien of seller and delivery to buyer. 131: 494.  
 Deposit of earnest money. 131: 494.  
 Payment or security. 131: 495.  
 Warranties. 131: 496.  
 Rescission by buyer. 131: 496.  
 Rescission by seller. 131: 497.  
 Rescission by auctioneer. 131: 497.  
 Recovery of damages by seller. 131: 497.  
 Specific performance. 131: 497.

**§ 5. Compensation and Lien of Auctioneer.**

- Right to fees or commissions. 131: 501.  
 Allowance for expenses and disbursements. 131: 501.  
 Action to recover compensation. 131: 501.  
 Lien for compensation. 131: 501.

**§ 6. Conduct and Validity of Sale.**

- Advertisement and announcement of terms of sale. 131: 484.  
 Manner of bidding. 131: 484.  
 Conditional bids. 131: 485.  
 Bid by owner or auctioneer. 131: 485.  
 Bid by agent. 131: 486.  
 Chilling and stifling competition. 131: 486.  
 Puffing and by-bidding. 131: 488.  
 Acceptance or rejection of bid. 131: 491.  
 Disputed bid. 131: 492.  
 Withdrawal of bid or of property. 131: 492.  
 Memorandum of bid. 131: 492.  
 Reopening sale and resale on default of buyer. 131: 493.  
 Right of auctioneer conducting forced sale to purchase thereat. 136: 793.

**AUDITA QUERELA.**

- § 1. Nature and Purpose of the Writ  
 Is a direct attack on the judgment. 23: 107.  
 In nature of bill in equity. 23: 107.  
 Purpose to relieve from wrongful act of adversary. 23: 107.  
 Grounds for relief. 23: 107.

**AUTHENTICATION.**

- Of requisition papers. See Extradition, § 7.

**AUTHORITY.**

- Of auctioneers. See Auctions and Auctioneers, § 2.  
 To certify bank check. See Banks and Banking, § 5.  
 To punish contempt of court. See Contempt, § 4.  
 Of executors and administrators. See Executors and Administrators, § 7.  
 Of administrator de bonis non. See Executors and Administrators, § 25.  
 Of cities. See Municipal Corporations, § 1.  
 Of agents. See Principal and Agent, § 3.  
 Of receivers. See Receivers, § 2.

**AUTOMOBILES.**

- Exempt from execution. See Exemptions, § 8.  
 Law of the automobile. See Highways, § 10.  
 Right to use streets for automobile races. See Municipal Corporations, § 22.  
 Imputing negligence of driver to occupant. See Negligence, § 14.

**AUTREFOIS ATTAINT.**

- Plea of. See Criminal Law, § 15.

**AVERSION TO KIN.**

- As affecting capacity to make a will. See Wills, § 11.

**AVOIDANCE.**

- See Disaffirmance; Rescission; Revocation.  
 Of agreement to arbitrate. See Arbitration and Award, § 2.  
 Of gifts causa mortis. See Gifts, § 3.  
 Of infant's contracts. See Infants, § 40.

**AVULSION.**

- Of lands on navigable lakes and streams. See Navigable Waters, § 6.

**AWAKENING PASSENGERS.**

- Duty of carrier to awaken sleeping passenger. See Carriers, § 50.  
 Reviving debt discharged by bankruptcy. See Bankruptcy, § 1.

**AWARD.**

- Of arbitrators. See Arbitration and Award, § 3.

**BABIES.**

See Infants; Parent and Child.

**BACKGAMMON.**

As gambling game. See Gaming, § 4.

**BAD REPUTATION.**

Proof of bad reputation of witness for truthfulness. See Witnesses, § 14.

**BAGATELLE.**

As gambling game. See Gaming, § 4.

**BAGGAGE.**

Effect of notice on ticket limiting carrier's liability for baggage. See Carriers, § 34.  
What constitutes. See Carriers, § 58.  
Delivery to carrier. See Carriers, § 59.  
Liability of carrier as warehouseman. See Carriers, § 60.  
Limitation of liability. See Carriers, § 61.  
Connecting carriers. See Carriers, § 62.  
Liability for loss or injury. See Carriers, §§ 63-65.

**BAIL.**

Proceedings to prevent debtors from departing or removing their property from jurisdiction. See No Exeat, §§ 1-4.

**BAILMENT.**

Care required of bank acting as bailee. See Banks and Banking, § 16.  
Distinguished from sale. See Sales, § 1.  
Bailees distinguished from warehousemen. See Warehousemen, § 1.

**§ 1. In General.**

Defined and distinguished from warehousing. 136: 214, 215.  
Distinguished from sale. 2: 711-713.  
Right of bailor to waive tort and sue in assumpsit for wrongful conversion. 134: 194.  
Duty of warehousemen in the care of property. 136: 212-254.  
When statute of limitations begins to run against bailor. 136: 485.  
Nonliability of bailee for loss by fire. 30: 507.

**BAKERS.**

Tools exempt from execution. See Exemptions, § 7.

**BALANCES.**

Form of statement of balances in account stated. See Account Stated, § 1.  
In bank pass-books. See Banks and Banking, § 15.

**BALLOTING MACHINES.**

Validity of statute authorizing. See Elections, § 5.

**BALLOTS.**

Ambiguities in election ballots. See Elections, § 6.  
Distinguishing marks invalidating ballots. See Elections, § 7.  
As evidence of vote cast. See Elections, § 8.

**BANK CHECK.**

See Banks and Banking.

**BANKRUPTCY.**

See, also, Assignments for Benefit of Creditors; Insolvency.

**§ 1. Revival of Debt Discharged by Bankruptcy.**

Dead debts and sleeping. 135: 377.  
The awakening promise, its requisites, sufficiency and assignability. 135: 378-388.  
Pleading new promise. 135: 388.  
Difference between parallel bars of statute of limitations and the discharge in bankruptcy. 135: 389.

**§ 2. New Promise Reviving Discharged Debt.**

Nature of. 135: 378.  
Part payment does not amount to. 135: 379.  
Effect of conditional promise. 135: 380.  
Must be express. 135: 381.  
Must be clear and unequivocal. 135: 383.  
Consideration. 135: 384.  
Oral promise sufficient. 135: 385.  
Date in relation to bankruptcy. 135: 385.  
To whom must be made. 135: 386.  
Effect on original debt. 135: 387.  
Assignability. 135: 388.  
Pleading. 135: 388.

**BANKS AND BANKING.**

IN GENERAL, § 1.  
CONTROL AND REGULATION, § 2.  
DEPOSITS AND CHECKS, § 3.  
DEPOSIT IN ASSUMED NAME, § 4.  
CERTIFIED CHECKS, § 5.  
CERTIFICATES OF DEPOSIT, § 6.  
EFFECT OF DEPOSIT OF CHECK, § 7.  
ACCEPTANCE OF CHECK BY BANK, § 8.  
LIABILITY FOR NOT HONORING CHECKS, § 9.  
RIGHTS AND REMEDIES ON PAYMENT OF ALTERED, RAISED OR FORGED CHECK, § 10.  
RECOVERY OF PAYMENT PROCURED THROUGH FORGED INDORSEMENT, § 11.

**LIEN OF BANK NOT FOUNDED ON CONTRACT, § 12.**

**IMPLIED LIENS OF BANKS, § 13.**

**PASS-BOOK, § 14.**

**BALANCES ENTERED IN PASS-BOOKS, § 15.**

**CARE REQUIRED OF BANKS AS AGENTS OR BAILEES, § 16.**

**COLLECTIONS, § 17.**

**DUTIES AS COLLECTING AGENTS, § 18.**

**TITLE TO MONEY DEPOSITED WITH OR COLLECTED BY BANK, § 19.**

**RIGHT TO RECOVER DEPOSITS OR COLLECTIONS UPON INSOLVENCY, § 20.**

**SETOFF OF DEMANDS AGAINST BANK IN HANDS OF RECEIVER, § 21.**

**SAVINGS BANKS, § 22.**

— **DUTY OF BANK AS DEPENDENT ON NATURE OF DEPOSIT, § 23.**

— **DUTY WITH RESPECT TO REPAYMENT OF DEPOSIT, § 24.**

— **NATURE AND CHARACTER OF PASS-BOOKS, § 25.**

— **BY-LAWS, RULES AND REGULATIONS, § 26.**

**Fixing liability of drawer on indorser of check. See Bills and Notes, § 16.**

**Power of banking corporation to purchase its own stock. See Corporations, § 47.**

**Safe deposit companies. See Depositaries, § 1.**

**Deposits by executors and administrators. See Executors and Administrators, § 12.**

**Gift of bank pass-book. See Gifts, § 2.**

**Deposits by guardian. See Guardian and Ward, § 9.**

**State taxation of national banks. See Taxation, § 10.**

**Taxation by banking franchises. See Taxation, § 8.**

**Place of taxation of national bank property and stock. See Taxation, § 13.**

**Usurious transactions by banks. See Usury, § 1.**

**As safe deposit companies. See Warehousemen, § 5.**

## **§ 1. In General.**

**Business of banking defined. 135: 60.**

## **§ 2. Control and Regulation.**

**The banking business as a proper subject of legislative regulation. 135: 60-62.**

## **§ 3. Deposits and Checks.**

**Check as assignment of fund. 19: 609-612.**

**Liability of directors for loss of deposit. 54: 724, 732.**

**When statute of limitations begins to run against depositor. 136: 486.**

## **§ 4. Deposit in Assumed Name.**

**Money belonging to person whose name is assumed. 37: 600.**

## **§ 5. Certified Checks.**

**Meaning, purpose and form of certification. 128: 691.**

**Authority to certify. 128: 694.**

**General effect of certification. 128: 696-699.**

**Presentation, demand and payment. 128: 700.**

**Attachment or garnishment of funds. 128: 701.**

**Validity of certification—Check to fictitious payee. 128: 701.**

— **Mistake, fraud, alteration or forgery. 128: 702.**

— **Lost or stolen check. 128: 704.**

— **Alteration after certification. 128: 704.**

## **§ 6. Certificates of Deposit.**

**Definition. 75: 43.**

**Power of banks to issue. 75: 44.**

**Nature and negotiability. 75: 46.**

**Rights of parties respecting payment. 75: 55.**

**Liability of bank on certificate. 75: 58.**

## **§ 7. Effect of Deposit of Check.**

**Received for collection only. 47: 389.**

**Nature of deposit a question of fact. 47: 389.**

**Effect of dishonor of check. 47: 389.**

**Check becomes property of bank. 47: 389, 390.**

**Check drawn on bank crediting it. 47: 390.**

**Effect of overdraft. 47: 390, 391.**

**Effect of indorsing check "for deposit." 47: 391.**

## **§ 8. Acceptance of Check by Bank.**

**In general. 118: 348.**

**Technical impossibility of acceptance. 118: 348.**

**Effect of refusal to accept. 118: 348.**

**Effect as an assignment. 118: 349.**

**Revocability of check. 118: 349.**

**By telegram. 118: 350.**

**Manner of making. 118: 351.**

**Promise by bank to pay. 118: 351.**

**Refusal to accept pay. 118: 348.**

**Effect of response to inquiry whether check is good. 118: 349.**

**What is a check. 118: 348.**

## **§ 9. Liability for not Honoring Checks.**

**Liability to depositor. 80: 865.**

When bank may refuse payment. 80: 868.

Liability to holder of check. 80: 870.

**§ 10. Rights and Remedies on Payment of Altered, Raised or Forged Check.**

General rule. 17: 889.

Exceptions to the rule. 17: 890.

Raised and altered checks. 17: 896.

Recovery of money paid. 17: 898.

Certified checks. 17: 899.

Notice of forgery and demand for restitution. 17: 899.

**§ 11. Recovery of Payment Procured Through Forged Indorsement.**

Against person indorsing after forgery. 94: 642.

Undertaking or warranty of person accepting payment. 94: 643.

Limitations on right of recovery. 94: 643.

Loss to payor essential to recovery. 94: 644.

Notice necessary. 94: 644.

Relative rights of innocent indorsees. 94: 644.

Right of drawer against person receiving payment. 94: 645.

Rights of payee against person receiving payment. 94: 645.

Estoppel to deny genuineness of indorsement. 94: 645.

Conditions on which recovery may be had. 94: 645.

As between banks. 94: 646.

Recovery from bona fide holders. 94: 647.

**§ 12. Lien of Bank not Founded on Contract.**

On general deposits—In general. 111: 419.

— Setoff of debt against depositor. 111: 420.

— Application of deposit to debt. 111: 421.

— Maturity of debt. 111: 421, 422.

— Character of debt. 111: 423.

— Ownership of deposit, equities of third persons. 111: 423.

On special deposits. 111: 425.

On paper deposited for collection—Between bank and depositor. 111: 425.

— Between collecting and forwarding bank. 111: 426-429.

**§ 13. Implied Liens of Banks.**

General lien on funds of depositor. 4: 202.

No lien on securities pledged for debt. 4: 203.

No lien for debt not due. 4: 203.

Lien on bills indorsed for collection. 4: 203.

**§ 14. Pass-book.**

Defined. 134: 1021.

**§ 15. Balances Entered in Pass-books.**

In general. 134: 1019.

Definitions. 134: 1021.

Effect of entry. 134: 1022.

Acquiescence. 134: 1024.

**§ 16. Care Required of Banks as Agents or Bailees.**

Care due from directors to bank. 38: 773.

General rule requiring diligence. 38: 774.

Banks acting as collecting agents. 38: 775.

Immediate officers of bank. 38: 775.

In employing notaries. 38: 775.

Acts of correspondents and other agents. 38: 776.

As bailees of special deposits. 38: 778.

Care of securities received as collateral. 38: 778.

Care of special deposits without compensation. 38: 780.

Embezzlement of special deposit by officer or agent. 38: 784.

Duty in care of valuables stored. 136: 222.

**§ 17. Collections.**

Right of correspondent to hold paper received for collection, or its proceeds, from the owner in case of the insolvency of the forwarding bank. 14: 583-586.

**§ 18. Duties as Collecting Agents.**

Authority to collect—Agency. 77: 613.

Title to paper held for collection. 77: 614.

Diligence required. 77: 615.

Presentment for payment. 77: 616.

Demand and protest. 77: 618.

Protest. 77: 619.

Notice of dishonor. 77: 620.

Transmitting to distant place. 77: 623.  
 Liability for negligence of notaries, correspondents and agents. 77: 625.  
 Instructions—Provisional credit. 77: 627.  
 Custom or usage. 77: 628.  
 Suit by bank. 77: 628.  
 Payment in money only. 77: 628.  
 Disposition of proceeds. 77: 629.

#### **§ 19. Title to Money Deposited With or Collected by Bank.**

General deposits. 86: 776.  
 Special deposits. 86: 778.  
 Deposits of negotiable paper—When received as cash. 86: 781.  
 — When received or deposited for collection. 86: 782.  
 Proceeds of paper deposited for collection. 86: 786.  
 — Effect of custom to credit depositor with. 86: 786.  
 — Where bank does not receive cash payment. 86: 787.  
 — When received after insolvency. 86: 788.  
 — Title as between collecting and remitting bank. 86: 789, 790.  
 — Title as between correspondent bank and depositor. 86: 791.  
 Deposits received by bank while insolvent. 86: 793.

#### **§ 20. Right to Recover Deposits or Collections upon Insolvency.**

General and special deposits. 86: 795.  
 Deposit of negotiable paper. 86: 796.  
 Proceeds of collection received after insolvency. 86: 796.  
 Proceeds of collection received before insolvency. 86: 797.  
 Recovery by remitting bank from insolvent correspondent. 86: 798.  
 Recovery by depositor from correspondent upon insolvency of remitting bank. 86: 799.  
 Recovery of deposit or paper received after known insolvency. 86: 800.  
 Recovery of funds converted into other property. 86: 801.  
 Fund mingled with other funds of bank. 86: 802.  
 — Presumption that trust funds remain in bank. 86: 805.

#### **§ 21. Setoff of Demands Against Bank in Hands of Receiver.**

Right to setoff in general. 47: 142-144.

#### **§ 22. Savings Banks.**

General nature of savings banks. 105: 729.

#### **§ 23. Duty of Bank as Dependent on Nature of Deposit.**

Ordinary deposits. 105: 734.  
 Special deposits. 105: 735.  
 Joint deposits or to survivor. 105: 735.  
 Deposits in trust. 105: 740.  
 Deposits in name of another or under assumed name. 105: 742.

#### **§ 24. Duty With Respect to Payment of Deposit.**

In general. 105: 745.  
 Duty to exercise ordinary care. 105: 745.  
 Effect of suspicious facts and circumstances. 105: 746.  
 Necessity for use of most improved banking system. 105: 747.  
 Duty to identify withdrawing depositor. 105: 747.  
 Lost or stolen pass-book. 105: 750.  
 Where forged or altered receipt is presented. 105: 752.  
 Where deposit is claimed as deposit. 105: 753.  
 Where depositor is dead. 105: 755.  
 Where administrator is appointed but depositor is not dead. 105: 755.  
 Garnishment of deposit. 105: 756.  
 Right of bank to prohibit withdrawals. 105: 756.  
 Where deposit is in excess of statutory limit. 105: 756.  
 Right to require indemnity before repaying deposit. 105: 756.  
 Estoppel of bank or depositor. 105: 758.  
 Contributory negligence. 105: 758.  
 Right of depositor to recover legal rate of interest after refusal of bank to repay deposit. 105: 759.

#### **§ 25. Nature and Character of Pass-books.**

Negotiability. 105: 743.  
 Distinction between pass-books of commercial and savings banks and

- certificates of deposit. 105: 744.  
 Effect of entries in pass-books. 105: 745.
- § 26. By-laws, Rules and Regulations.**  
 Right to formulate. 105: 731.  
 Mode of showing adoption. 105: 731.  
 Assent of depositors. 105: 731.  
 As part of contract of depositor. 105: 732.  
 Necessity that existence of by-law be shown. 105: 733.  
 By-laws must be reasonable. 105: 733.

### BAR.

Of judgment. See Judgment, §§ 30-35.  
 Effect of bar of statute of limitations. See Limitation of Actions, §§ 10, 11, 13.

### BARBED WIRE.

Injuries from barbed-wire fences. See Fences, § 1.

### BARBERS.

Tools exempt from execution. See Exemptions, § 7.

### BARRATRY.

See Champerty and Maintenance.

### BARREL-HOUSE.

As building subject to arson. See Arson, § 2.

### BARRENNESS.

As justification for breach of contract to marry. See Breach of Marriage Promise, § 2.

### BASTARDS.

SERVICES OF CHILD, § 1.  
 EVIDENCE — DECLARATIONS OF MOTHER IN TRAVAIL, § 2.  
 — TESTIMONY OF HUSBAND OR WIFE TO PROVE ILLEGITIMACY, § 3.  
 — TO PROVE ILLEGITIMACY OF CHILD BORN IN LAWFUL WEDLOCK, § 4.

Review of bastardy proceedings on habeas corpus. See Habeas Corpus, § 3.

#### § 1. Services of Child.

Presumption that services of bastard child are gratuitous. 133: 256.

#### § 2. Evidence—Declarations of Mother in Travail.

Admissibility in general. 109: 741.  
 By whom declarations may be proved. 109: 744.  
 Sufficiency of declaration. 109: 744.

What is time of labor or travail. 109: 745.

#### § 3. — Testimony of Husband or Wife to Prove Illegitimacy.

In general. 69: 571.  
 Declarations or acts of husband or wife. 69: 573.  
 Testimony of mother of child. 69: 574.

#### § 4. — To Prove Illegitimacy of Child Born in Lawful Wedlock.

Presumption from birth in lawful wedlock. 126: 263.  
 — Rebuttability. 126: 263.  
 Burden of proof. 126: 264.  
 Character of proof necessary to overcome presumption of legitimacy. 126: 264.  
 Declarations of husband or wife. 126: 267.  
 Sufficiency of evidence. 126: 270.  
 — Where child was begotten before the marriage. 126: 272.

### BATTERY.

See Assault and Battery.

### BAWDY-HOUSE.

See Disorderly House.

### BEACH-COMBING.

Stealing from derelict may be declared a crime. See Criminal Law, § 1.

### BEARER PAPER.

See Bills and Notes.

### BEARING ARMS.

Right to bear arms. See Weapons, § 1.

### BEDDING.

As baggage. See Carriers, § 58.

### BEDDING STOCK-CARS.

Duty of carrier. See Carriers, § 29.

### BEER.

Regulation of sale and use. See Intoxicating Liquors.

### BEEES.

Liability of owner for injuries by, and bees as a nuisance. See Animals, § 3.

### BEGGING.

As vagrancy. See Vagrancy, § 2.

## **BELIEF.**

Admissibility of evidence of belief of witness. See Evidence, § 9.  
Necessity that false pretense induce. See False Pretenses, § 1.  
Superstitious beliefs constituting insane delusions. See Insane Persons, § 1.

## **BENEFICIAL ASSOCIATIONS.**

GENERAL NOTE, § 1.  
FEATURES OF THE LAW APPLICABLE TO MUTUAL OR MEMBERSHIP LIFE OR ACCIDENT INSURANCE, § 2.  
CERTIFICATES, § 3.  
ASSIGNMENT OF CERTIFICATE, § 4.  
SUICIDE AS AVOIDING CERTIFICATE, § 5.  
EFFECT OF CHANGE OF BY-LAWS ON EXISTING MEMBERS, § 6.  
RIGHT OF MEMBERS TO RESORT TO COURTS, § 7.  
BENEFICIARIES, § 8.  
See, also, Associations; Insurance; Religious Societies.  
Equity jurisdiction over. See Associations, § 4.

### **§ 1. General Note.**

As insurance companies. 19: 781.  
Forfeiture of certificate and waiver thereof. 19: 783.  
Beneficiaries—Designation. 19: 786.  
— Who may be designated. 19: 787.  
— Effect of failure to designate. 19: 789.  
— Interest acquired by. 19: 789.  
— Change of. 19: 790.  
Assignment of benefit. 19: 790.

### **§ 2. Features of the Law Applicable to Mutual or Membership Life or Accident Insurance.**

Law governing mutual insurance generally. 52: 543.  
Conclusiveness of decisions of tribunals of association and power of courts to review them. 52: 546.  
Effect of provision for submission of controversy to association's board of arbitrators. 52: 547.  
Statutory provisions. 52: 548.  
Estoppel against association. 52: 549.  
Estoppel against members. 52: 550.  
General features of mutual insurance. 52: 552.  
Application, acceptance and membership. 52: 552.  
Certificate of membership and of insurance. 52: 555.

Index-Digest—3

Charter, constitution, by-laws and rules. 52: 556.  
Powers of company and its agents. 52: 559.  
Beneficiaries—Designation. 52: 559–572.  
— Change of. 52: 561–572.  
Proofs of death. 52: 564.  
Proceeds of policy—Vested rights. 52: 564.  
Title and descent. 52: 568–572.  
Assignment of contract or policy. 52: 565.  
Dues and assessments. 52: 572.  
Forfeiture of policy. 52: 574.  
Suspension or expulsion and reinstatement. 52: 574.  
Surrender of certificate. 52: 577.  
Actions against company. 52: 577.

### **§ 3. Certificates.**

Nature of certificate of membership and its assimilation to a policy of insurance. 87: 514.

### **§ 4. Assignment of Certificate.**

Assignability. 87: 514.  
Requisites of assignment. 87: 515.  
Who may assign. 87: 516.  
Who may be assignee—One having no insurable interest. 87: 517.  
— One outside designated class of beneficiaries. 87: 518.  
Effect of assignment. 87: 519.

### **§ 5. Suicide as Avoiding Certificate.**

Effect of provisions in by-laws or certificate exempting association. 84: 553.  
Effect of new by-laws on existing members. 84: 553.  
Right of board of control to add new regulations. 84: 554.

### **§ 6. Effect of Change of By-laws on Existing Members.**

Amendment must be provided for in contract. 83: 706.  
Amendment must be legal. 83: 708.  
Must not destroy vested rights. 83: 710.  
May not destroy contract by radical change. 83: 713.  
Amendments are not retroactive. 83: 714.  
Amendments injuriously affecting members. 83: 715.

**Amendments affecting beneficiaries.**  
83: 718.

**By-law avoiding certificate on death of member by suicide.** 84: 553, 554.

**§ 7. Right of Members to Resort to Courts.**

**Injunction.** 59: 198.

**Mandamus.** 59: 200.

**Action to recover money or property.**  
59: 203.

**Decision of tribunal of association as res adjudicata.** 59: 204.

**§ 8. Beneficiaries.**

**Designation.** 19: 786-789.

**Interest acquired by.** 19: 789.

**Change of.** 19: 790.

**Assignment of benefit.** 19: 790.

**BENEFICIARIES.**

**In mutual aid societies.** See *Beneficial Associations*, § 8.

**Effect of writings not designating beneficiary of trust.** See *Trusts*, § 8.

**Effect of failure of trust deed to designate.** See *Trusts*, § 6.

**Liability for acts of trustee in contravention of trust.** See *Trusts*, § 12.

**BENEFIT OF ANOTHER.**

**Contracts for benefit of another.** See *Contracts*, § 4½.

**BEQUESTS.**

**Validity of bequests for masses.** See *Charities*, § 3.

**General, specific and demonstrative.** See *Wills*, §§ 45-47.

**BESTIALITY.**

See *Sodomy*.

**BETTERMENTS.**

**What are betterments and when allowance is made for them.** See *Improvements*, § 1.

**BETTING.**

**As gambling.** See *Gaming*.

**BIAS.**

**Disqualifying petit juror.** See *Jury*, § 3.

**Remarks of court showing.** See *Trial*, § 5.

**In favor of particular heirs or objects of bounty as avoiding will.** See *Wills*, § 17.

**Admissibility of evidence to show bias of witness.** See *Witnesses*, § 14.

**BICYCLE PATHS.**

**As additional servitudes.** See *Highways*, § 5.

**As additional servitudes.** See *Municipal Corporations*, § 26.

**BICYCLES.**

**Exempt from execution.** See *Exemptions*, § 8.

**BIDDERS.**

**Who are responsible bidders for public work.** See *Municipal Corporations*, § 15.

**At auction sales.** See *Auctions and Auctioneers*, § 6.

**BIGAMY.**

**Invalidity of bigamous marriage.** See *Marriage*, § 4.

**§ 1. Nature and Elements of Offense.**

**Nature of offense.** 126: 201.

**Elements of offense in general.** 126: 202.

**Statutory provisions.** 126: 204.

**Intent.** 126: 205.

— Belief that former marriage has been dissolved by divorce or death. 126: 206.

**Cohabitation.** 126: 214.

**Marriage solemnized by unauthorized person.** 126: 216.

**Marriage without license.** 126: 217.

**Edmund's anti-polygamy law.** 126: 219.

**§ 2. Proof of Former Marriage.**

**Necessity for record evidence of marriage.** 47: 228.

**Necessity for identification of parties to record.** 47: 228.

**Declarations, conduct and cohabitation.** 47: 228, 230.

**Reputation.** 47: 229.

**Admissions of defendant.** 47: 231, 232.

**Confessions.** 47: 232.

**§ 3. Defenses.**

**Absence of former husband or wife.** 126: 208.

**Divorce.** 126: 209.

**Former marriage under age of consent.** 126: 215.

**Former marriage solemnized by unauthorized person.** 126: 216.

**Second marriage solemnized by unauthorized person.** 126: 216.

**Separation by mutual consent of parties to first marriage.** 126: 218.



**BILLBOARDS.**

Police power of cities to regulate. See Municipal Corporations, § 5.

**BILLIARDS.**

As gambling game. See Gaming, § 4.

**BILL IN EQUITY.**

See Equity.

**BILL OF EXCEPTIONS.**

Filing. See Courts, § 8.

Mandamus to compel signing. See Mandamus, § 6.

**BILL OF EXCHANGE.**

See Bills and Notes.

**BILL OF INTERPLEADER.**

See Interpleader, § 1.

**BILL OF LADING.**

In general. See Carriers, § 7.

Negotiability. See Carriers, § 7.

Rights and liabilities of assignees. See Carriers, § 8.

Stipulations which carrier may not exact. See Carriers, § 10.

Stipulations limiting liability of carrier. See Carriers, §§ 18-28.

**BILL OF PEACE.**

To prevent multiplicity of suits. See Equity, § 6.

**BILL OF REVIEW.**

Equitable relief against judgment otherwise than by bill of review. See Judgment, § 24.

**BILLS AND NOTES.**

ACCOMMODATION PAPER, § 1.

VALIDITY OF STIPULATION FOR ATTORNEYS' FEES, § 2.

FRAUD IN PROCURING DELIVERY, § 3.

ACCEPTANCE OF BILL OF EXCHANGE, § 4.

ALTERED PAPER, § 5.

NEGOTIABILITY, § 6.

AGREEMENTS AND CONDITIONS DESTROYING NEGOTIABILITY, § 7.

INDORSEMENT, § 8.

FORM OF INDORSEMENT, § 9.

ALLONGE, § 10.

EFFECT OF INDORSEMENT BY STRANGER BEFORE DELIVERY, § 11.

EFFECT OF INDORSEMENT OF MEMORANDUM, § 12.

INDORSEMENT WITHOUT RECOURSE, § 13.

LIABILITY OF INDORSER WITHOUT RECOURSE, § 14.

LIABILITY OF INDORSER OF NON-NEGOTIABLE INSTRUMENT, § 15.

FIXING LIABILITY OF DRAWER OR INDORSER OF CHECK, § 16.

LAW GOVERNING DEMAND, PROTEST AND NOTICE OF DISHONOR OF FOREIGN BILL OF EXCHANGE, § 17.

TITLE OF BONA FIDE PURCHASER OF STOLEN PAPER, § 18.

FRAUD IN INCEPTION AS AFFECTING BONA FIDE HOLDERS, § 19.

RIGHTS OF BONA FIDE HOLDER OF STOLEN PAPER, § 20.

ACTIONS, § 21.

RIGHT OF ACTION OF PAYEE OR HOLDER AGAINST DRAWER OF CHECK, § 22.

BURDEN OF PROVING WANT OF CONSIDERATION, § 23.

Acceptance of check in full as satisfaction for debt. See Accord and Satisfaction, § 1.

Alterations of writings. See Alteration of Instruments, § 2.

Implied authority of holder or maker of instrument to alter it. See Alteration of Instruments, § 3.

Negotiability of bills of lading. See Carriers, § 7.

Deposit in escrow. See Escrows, § 2.

Parol evidence to show conditions in, or to vary indorsement. See Evidence, § 27.

Note as payment taking sale out of operation of statute of frauds. See Frauds, Statute of, § 7.

Of infants. See Infants, § 1.

Revenue stamps on. See Internal Revenue, § 1.

Waiver of mechanic's lien by taking notes. See Mechanics' Liens, § 7.

Rights of holders of city bonds and warrants. See Municipal Corporations, § 37.

Negotiability of receivers' certificates. See Receivers, § 6.

Reformation of. See Reformation of Instruments, § 1.

Right to replevin. See Replevin, § 2.

Place of taxation. See Taxation, § 13.

Usurious. See Usury, § 1.

As wills. See Wills, § 2.

**§ 1. Accommodation Paper.**

Nature of contract of maker or indorser. 31: 745.

Liability of maker or indorser. 31: 745.

Pledge as collateral security or in payment. 31: 747.

Misappropriation. 31: 748.

Fraudulent diversion. 31: 748.

Rights of makers and indorsers. 31: 752.

Made or indorsed by corporations. 31: 753.

Made or indorsed by agents or partners. 31: 754.

**§ 2. Validity of Stipulation for Attorneys' Fees.**

Weight of authority favors validity. 55: 438, 440, 441.

When used as device to cover usury. 55: 439.  
 Should not fix amount of fee. 55: 439.  
 Sum stipulated must be reasonable. 55: 439.  
 Enforceable against indorser. 55: 443.  
 As contract of indemnity. 55: 443.  
 Decisions holding the stipulation void. 55: 444.

### § 3. Fraud in Procuring Delivery.

Rights of bona fide holder. 37: 458.  
 Delivery contrary to terms of escrow. 37: 459.  
 Note written over blank signature. 37: 459.  
 Effect of negligence of maker. 37: 459, 460.  
 Delivery obtained by trick or device. 37: 459.  
 Stolen paper. 37: 460.

### § 4. Acceptance of Bill of Exchange.

Binds acceptor in favor of indorsee for value. 1: 134.  
 As evidence of payment of account for which it is given. 1: 135.  
 Forged bill. 1: 135.  
 Defenses available to acceptor. 1: 135-138.

### § 5. Altered Paper.

Liability of maker whose negligence facilitated the alteration. 4: 25, 26.

### § 6. Negotiability.

Note indorsed without recourse. 134: 998.

### § 7. Agreements and Conditions Destroying Negotiability.

Conditions affecting certainty of payment—In general. 125: 192.  
 — Provision for retention of title to property. 125: 194.  
 — Provision for return of instrument. 125: 195.  
 — Provision waiving exemption and homestead rights. 125: 195.  
 Medium and manner of payment—Payment from particular fund. 125: 196.  
 — Payment in goods. 125: 197.  
 — Payment in currency or current funds. 125: 197.  
 — Payment in foreign money. 125: 198.

Conditions affecting time of payment—Uncertain date of payment. 125: 199.

— Payment on or before specified time. 125: 200.

— Giving maker option to pay before maturity. 125: 200.

— Giving payee option to declare due before maturity. 125: 200.

— Provision for extension of time. 125: 201.

— Provision for payment on contingency. 125: 202.

Conditions affecting amount—Uncertainty. 125: 203.

— Provision for discount. 125: 204.

— Provision in regard to interest. 125: 204.

— Provision in regard to taxes and insurance. 125: 205.

— Provision for attorneys' fees. 125: 207-209.

— Provision for exchange. 125: 212.

### § 8. Indorsement.

General note. 14: 793, 794.

### § 9. Form of Indorsement.

Indorsement without recourse. 134: 993.

### § 10. Allonge.

Definition and propriety of. 79: 528.

### § 11. Effect of Indorsement by Stranger Before Delivery.

Federal and Arkansas rule. 72: 676.

Rule in Colorado, Delaware, Florida, Georgia, Louisiana and Maine. 72: 677.

Rule in Maryland, Massachusetts, Michigan, Minnesota, Mississippi and Missouri. 72: 678.

Rule in Nebraska, New Hampshire, North Carolina, Ohio, Rhode Island and South Carolina. 72: 679.

Rule in Texas, Tennessee, Utah, Vermont, Virginia, West Virginia, Washington. 72: 680.

Liability as guarantor. 72: 680.

Liability as indorser. 72: 681.

Non-negotiable paper. 72: 683.

Consideration. 72: 684.

Time when liability attaches. 72: 684.

**§ 12. Effect of Indorsement of Memorandum.**

General rule. 127: 433.  
 Place of indorsement. 127: 434.  
 Not signed. 127: 437.  
 Relating to time of payment. 127: 439.  
 Relating to place of payment. 127: 440.  
 Relating to medium of payment. 127: 441.  
 Presumption as to time when indorsement was made—Indorsement on margin. 127: 443.  
 — Indorsement on back. 127: 444.

**§ 13. Indorsement Without Recourse.**

Liability of indorser. 7: 365.  
 Implied warranties. 7: 365.  
 Transfer of title by indorsement without recourse. 134: 998.

**§ 14. Liability of Indorser Without Recourse.**

As indorser. 134: 995.  
 As vendor. 134: 995.  
 On warranty of genuineness. 134: 996.  
 On warranty of title. 134: 996.  
 On warranty of validity. 134: 996.

**§ 15. Liability of Indorser of Non-negotiable Instrument.**

Before delivery—As maker or guarantor. 97: 985.  
 — Qualified liability. 97: 986.  
 Blank indorsement—Authority to fill. 97: 987.  
 — Liability of indorser. 97: 988.  
 By payee. 97: 988.  
 Diligence required to fix liability. 97: 989.  
 Accrual of cause of action. 97: 990.

**§ 16. Fixing Liability of Drawer or Indorser of Check.**

Presentment and notice of nonpayment. 17: 807.  
 Time to present. 17: 807, 808.  
 — When parties reside in different places. 17: 809.  
 When presentment may be dispensed with. 17: 809, 810.

**§ 17. Law Governing Demand, Protest and Notice of Dishonor of Foreign Bill of Exchange.**

General principles. 121: 871.

Time of payment and days of grace. 121: 872.

Necessity for demand and protest. 121: 872.

Time, manner and sufficiency of demand and protest. 121: 876.

Necessity for notice of dishonor. 121: 878.

Time, manner and sufficiency of notice of dishonor. 121: 878.

**§ 18. Title of Bona Fide Purchaser of Stolen Paper.**

Non-negotiable securities. 103: 979, 981.  
 — Certificate of stock. 103: 982.  
 Negotiable securities. 103: 982.  
 — Bonds. 103: 984.  
 — Government bonds. 103: 985.  
 — Notes, bills and checks. 103: 986, 987.

**§ 19. Fraud in Inception as Affecting Bona Fide Holders.**

Who are bona fide holders. 11: 309.  
 Holder takes unaffected by fraud. 11: 309.  
 Instruments obtained by fraud or crime. 11: 313.  
 Instrument circulated in violation of agreement. 11: 314.  
 Instruments executed in blank and wrongly filled. 11: 316.  
 Instrument so drawn that portion may be detached or altered. 11: 317.  
 Instrument executed by mistake or fraud. 11: 318.  
 Amount recoverable by holder of defrauded maker or indorser. 11: 321.  
 Burden of proving bona fide ownership. 11: 323.

**§ 20. Rights of Bona Fide Holder of Stolen Paper.**

History and development of the law. 125: 803-805.  
 Paper lost or stolen before delivery. 125: 805-808.  
 Paper negotiable by delivery. 125: 813.  
 Paper negotiable by indorsement. 125: 813.  
 Paper issued without authority. 125: 815.  
 Bonds. 125: 815.  
 Coupons and checks. 125: 816.

Certificates of deposit. 125: 817.

Bills of lading. 125: 817.

Burden of proof. 125: 817.

#### § 21. Actions.

Denials on information and belief. 133: 111.

Parol evidence to explain nature of indorsement. 134: 994.

#### § 22. Right of Action of Payee or Holder Against Drawer of Check.

Nature and grounds. 128: 88.

Title to sustain—In general. 128: 89.

Indorsees and assignees. 128: 90.

Trustees. 128: 90.

Delivery as affecting. 128: 90.

Consideration as affecting. 128: 91.

— Illegality. 128: 92.

When partner draws check without authority. 128: 93.

When holder could protect himself by applying funds belonging to indorser. 128: 94.

#### § 23. Burden of Proving Want of Consideration.

At common law. 135: 769.

Under code provisions. 135: 774.

When on third party. 135: 775.

#### BIRDS.

See Animals; Game.

#### BIRTH OF ISSUE.

Prerequisite to curtesy. See Curtesy, §§ 3, 7.

#### BLACKLISTING.

Right of employers to keep list of discharged servants. See Libel and Slander, § 3.

#### BLACKMAIL.

See Extortion; Threats.

#### BLANK SPACES.

In certificate of acknowledgment. See Acknowledgment, § 4.

#### BLASTING.

Right to blast as affected by rights of adjoining land owners. See Adjoining Land Owners, § 3.

#### BLIND LODES.

Rules governing discovery of. See Mines and Minerals, § 2.

#### BLIND PERSONS.

Right of carrier to refuse to carry. See Carriers, § 40.

#### BLOOD RELATIONS.

Affinity between. See Descent, § 3.

#### BLUESTONE.

As necessary of life. See Monopolies, § 1.

#### BOARDERS.

Distinguished from guests at hotel. See Innkeepers, § 1.

Mechanic's lien for board furnished workmen. See Mechanics' Liens, § 1.

#### BOARDING-HOUSE.

Lien of keeper for board. See Innkeepers, § 5.

#### BOARD OF TRADE.

See Exchanges.

#### BOARDS.

Powers of boards of health. See Health, § 2.  
Mandamus against ministerial boards. See Mandamus, § 5.

#### BONA FIDE HOLDERS.

Of stolen papers. See Bills and Notes, §§ 18, 20.

Fraud in inception as affecting bona fide holder of commercial papers. See Bills and Notes, § 19.

Right of action against drawer of check. See Bills and Notes, § 22.

#### BONA FIDE PURCHASER.

Effect of alteration of instrument on rights of. See Alteration of Instruments, § 5.

Of real property. See Vendor and Purchaser, § 4.

#### BONA FIDES.

See references under Good Faith.

#### BOND FOR TITLE.

Contracts to convey land. See Vendor and Purchaser, §§ 1-13.

#### BONDS.

Appeal bonds. See Appeal and Error, § 4.

To keep the peace. See Breach of the Peace, § 1.

Of infants. See Infants, § 1.

Mandamus to compel approval of. See Mandamus, § 6.

Municipal bonds. See Municipal Corporations, § 38.

To prevent debtor from departing or removing his property. See Ne Exeat, § 4.

Of public officers. See Officers, §§ 16-28.  
 Surety bonds. See Principal and Surety, § 2.  
 Railroad mortgages. See Railroads, §§ 4, 5.  
 Reformation of. See Reformation of Instruments, § 1.  
 Place of taxation. See Taxation, § 13.

### § 1. In General.

Title acquired by bona fide purchasers of stolen bonds. 103: 984, 985.

### BONIS NON.

Administrators de bonis non. See Executors and Administrators, §§ 23-26.

### BOOK ACCOUNTS.

What accounts may be stated. See Account Stated, § 1.

### BOOKMAKING.

As gambling device. See Gaming, § 5.

### BOOKS.

As baggage. See Carriers, § 58.  
 Right of corporations to inspect corporate books. See Corporations, § 10.  
 As evidence. See Evidence, §§ 18, 20.

### BORROWING.

Power of corporation to borrow. See Corporations, § 48.  
 Power of partner to borrow. See Partnership, § 10.  
 Authority of agent to borrow money. See Principal and Agent, § 3.  
 Usurious transactions. See Usury, § 1.

### BOTE.

Estovers. See Landlord and Tenant, § 33.

### BOUNDARIES.

IN GENERAL, § 1.  
 BOUNDARY AGREEMENTS, § 2.  
 WATERS AS BOUNDARY LINES, § 3.  
 CONTROLLING CALLS IN SURVEYS, § 4.  
 CONTROL OF CALLS FOR COURSE AND DISTANCE, § 5.  
 CONTROL OF CALLS FOR MONUMENTS AND LINES MARKED ON THE GROUND, § 6.  
 WHEN CALLS MAY BE DISREGARDED OR CORRECTED, § 7.  
 SUITS TO ASCERTAIN AND DECLARE, § 8.  
 CONCLUSIVENESS OF ESTABLISHED BOUNDARIES, § 9.  
 Mutual rights, duties and liabilities of owners of contiguous lands. See Adjoining Land Owners, § 2.  
 Trees overhanging boundary and roots penetrating adjoining land. See Adjoining Land Owners, § 2.  
 Venue of crime committed on boundary river. See Criminal Law, § 14.  
 Description of property in deeds. See Deeds, § 1.

Judicial notice of. See Evidence, § 3.  
 Declarations of former owner as evidence of. See Evidence, § 14.  
 Applicability of statute of frauds to boundary agreements. See Frauds, Statute of, § 8.

### § 1. In General.

Ancient boundaries. 22: 35.  
 Consideration of maps, plats, field-notes and the like. 129: 1013.  
 Order of preference with respect to the various methods of evidencing boundaries. 129: 995.  
 Necessity for following intent of parties as shown by the conveyance. 129: 991.  
 Declarations of former owner as evidence of. 134: 618-626.

### § 2. Boundary Agreements.

Estoppel by acquiescence in. 22: 35.

### § 3. Waters as Boundary Lines.

Distinction between navigable and non-navigable waters. 27: 56.  
 Thread of stream. 27: 58.  
 Water need not be named as boundary. 27: 59.  
 Meander lines. 27: 59.  
 Presumption against grantor. 27: 59.  
 Monuments at side of stream. 27: 59.  
 Lines along bank, edge or margin. 27: 60.  
 Lines along the shore. 27: 60.

### § 4. Controlling Calls in Surveys.

In general. 22: 34.  
 Conflict between surveys. 22: 34.  
 Evidence to establish or vary calls. 22: 34.  
 Evidence of quantity of land called for. 22: 35.  
 Evidence of lost corners. 22: 35.  
 Procedure in boundary suits. 22: 36.  
 Call for quantity. 129: 1010.  
 Calls for adjoiners. 129: 1005.

### § 5. Control of Calls for Course and Distance.

General rule. 129: 1007.  
 Where calls are merely incidental and not locative. 129: 1009.  
 Allowance for variation of compass. 129: 1009.  
 Where courses and distances are used with apparent controlling intent. 129: 1009.

Where variance exists between course and distance. 129: 1010.

**§ 6. Control of Calls for Monuments and Lines Marked on the Ground.**

Monuments. 129: 996.

Lines marked on the ground. 129: 1000.

When monuments do not control—Mistake or inadvertence. 129: 1001.

— Failure to establish existence and location of monuments called for. 129: 1002.

Reason for preference to calls for monuments. 129: 1003.

**§ 7. When Calls may be Disregarded or Corrected.**

Preference of certain and definite calls. 129: 992.

Preference of particular over general descriptions. 129: 992.

Where some of the calls are ambiguous or inconsistent with other calls. 129: 992.

Where a mistake exists with respect to some of the calls. 129: 993.

**§ 8. Suits to Ascertain and Declare.**

History. 119: 66.

Mere uncertainty or confusion of boundary not sufficient. 119: 66.

General grounds for assuming jurisdiction. 119: 68.

Relief as incident to suit maintainable on other grounds. 119: 70.

Existence of remedy at law. 119: 71.

Pleadings. 119: 72.

Mode of proceeding—Commissioners. 119: 73.

Judgment. 119: 74.

Statutes. 119: 74.

**§ 9. Conclusiveness of Established Boundaries.**

Lines run by government surveyors. 110: 677.

— Purpose of resurvey. 110: 679.

— Effect of agreement or acquiescence. 110: 679.

Lines run by municipal surveyor. 110: 680.

Private survey. 110: 680.

Resurveys and their purpose and effect. 110: 681.

Practical location by parties—In general. 110: 682.

— Formal agreement. 110: 683.

— Absence of formal agreement. 110: 683.

— Acquiescence in fixed line. 110: 684.

— Time of acquiescence. 110: 686.

— Dispute and uncertainty as to line. 110: 687.

— Mistake and intention of parties. 110: 688.

**BOUNTIES.**

Taxation for. See Taxation, § 3.

**BOWLING.**

As gambling game. See Gaming, § 4.

**BOWLING-ALLEY.**

Exemption of equipment from execution. See Exemptions, § 7.

**BOYCOTT.**

See Conspiracy, § 2.

**BREACH OF CONTRACT.**

Rights of parties on breach of contract. See Contracts, § 24.

**BREACH OF COVENANT.**

See Covenants, §§ 6-10.

**BREACH OF MARRIAGE PROMISE.**

**§ 1. Defenses.**

Unchastity of plaintiff. 40: 172, 173.

Immoral consideration. 40: 173.

Violation of law or public policy. 40: 173.

Infancy. 40: 174.

Marriage. 40: 174.

Duress or fraud. 40: 174.

Offer to marry. 40: 175.

Previous contract to marry another. 40: 175.

Mutual rescission. 40: 175.

Loss of affection for plaintiff. 40: 175.

Return of engagement ring by plaintiff. 40: 175.

Commission of crime. 40: 175.

Frequent intermarriage of ancestors. 40: 175.

Intemperance. 40: 175.

Venereal disease. 40: 175.

**§ 2. Same.**

Want of chastity. 44: 481.

Inability to consummate marriage. 44: 381.  
 Previous insanity. 44: 381, 382.  
 Commission of felony. 44: 382.  
 Agreement to marry another. 44: 382.  
 Existing marriage. 44: 382.  
 Impotency or barrenness. 44: 383, 384.  
 Contagious disease. 44: 385.  
 Misrepresentation as to social or financial standing. 44: 386.

### BREACH OF THE PEACE.

#### § 1. Bonds to Keep the Peace.

Authority to require. 90: 797.  
 Proceedings to obtain. 90: 799.  
 Grounds for requiring. 90: 799.  
 Security after trial. 90: 797.  
 Security against breach of the peace. 90: 799.  
 Security against keeping disorderly house. 90: 798.

### BREACH OF TRUST.

See Embezzlement.

### BREAKING.

As element of burglary. See Burglary, § 2.

### BRIBERY.

Effect on election. See Elections, § 3.  
 Distinguished from extortion. See Extortion, § 1.

#### § 1. General Note.

Definition. 116: 38.  
 Elements in general. 116: 38.  
 — The thing given. 116: 39.  
 — Intent. 116: 40.  
 — Unofficial or unauthorized acts. 116: 40.  
 Officers subject to. 116: 42.  
 Solicitation of bribe. 116: 44.  
 Attempt to bribe. 116: 45.

### BRIDGE-BUILDERS.

As vice-principals. See Master and Servant, § 19.

### BRIDGES.

Duty of vessels approaching. See Collision, § 1.  
 Impending flow of stream. See Waters and Watercourses, § 11.

#### § 1. In General.

As additional servitudes. 106: 265.

### BROKERS.

RIGHTS AND REMEDIES OF BROKERS AND MARGINAL PURCHASERS, § 1.  
 REAL ESTATE AGENTS, § 2.  
 WHEN COMMISSIONS ARE EARNED, § 3.  
 TROVER AND CONVERSION, § 4.

See, also, Principal and Agent.

Power to declare ticket brokerage a crime. See Criminal Law, § 1.  
 Right to commissions on gambling transactions. See Gaming, § 2.  
 License on occupation. See Licenses, § 1.

#### § 1. Rights and Remedies of Brokers and Marginal Purchasers.

Purchase on a margin defined. 74: 470.  
 Relation of pledgor and pledgee. 74: 471.  
 Broker's right to repledge stock. 74: 472.  
 Broker's rights and duties on failure of margin. 74: 475.  
 Purchaser's remedies against broker. 74: 479.  
 Broker's remedies. 74: 483.

#### § 2. Real Estate Agents.

Commissions on sales. 12: 589, 590; 28: 546-548; 139: 225.

#### § 3. When Commissions are Earned.

In general. 139: 225; 28: 546-548.  
 Necessity of proving employment. 139: 227.  
 Ratification of acts. 139: 228.  
 Revocation of authority. 139: 229.  
 Abandonment of employment. 139: 231.  
 Sufficiency of services—In general. 139: 232.  
 — Completion of negotiations. 139: 234.  
 Negotiations of different contract from that authorized. 139: 235.  
 — Optional or provisional contract. 139: 237.  
 — Illegal transaction. 139: 238.  
 — Contract in excess of authority. 139: 239.  
 Time when negotiations must be completed. 139: 240.  
 — When time is limited. 139: 241.  
 — Expiration of contract of employment. 139: 241.  
 — Time not essence of employment. 139: 242.  
 — Extension of time of employment. 139: 242.

- Agency coupled with an interest. 139: 244.
- Exclusive agency. 139: 244.
- Miscarriage of notice of sale to principal. 139: 244.
- Necessity that broker be the procuring cause. 139: 245.
- Necessity that broker be successful. 139: 247.
- Negotiations directly with principal. 139: 248.
- When purchaser refuses or is financially unable to perform. 139: 250.
- When several brokers are employed. 139: 251.
- Failure of negotiations through defects in title. 139: 253.
- Broker's ignorance of defects. 139: 254.
- Broker's knowledge of defects. 139: 255.
- Bringing parties together. 139: 256.
- Compensation from both parties. 139: 257.
- When right to commission depends on a sale. 139: 258.
- Calling a broker by mistake. 139: 258.

#### § 4. Trover and Conversion.

- Right of client to waive tort and sue broker in assumpsit for wrongful conversion. 134: 194.

#### BROTHELS.

See Disorderly House.

#### BUGGIES.

Exempt from execution. See Exemptions, § 7.

#### BUGS.

Liability of warehousemen for loss to goods from. See Warehousemen, § 6.

#### BUILDING AND LOAN ASSOCIATIONS.

Equity jurisdiction over. See Associations, § 4.  
Usurious transactions by. See Usury, § 1.

#### § 1. Rights and Liabilities of Members on Insolvency.

General nature of building and loan associations. 61: 24.  
Right to voluntarily discontinue business. 61: 25.  
Insolvency as terminating contracts of members. 61: 25.

Effect on dues and premiums. 61: 26.  
Effect on loans. 61: 26.  
Credits to be given for premiums. 61: 26.  
Return of interest paid. 61: 27.  
Credits for dues paid. 61: 28.  
Liability of members. 61: 29.  
Withdrawals and assessments. 61: 30.

#### BUILDING CONTRACTS.

Substantial performance of. See Contracts, § 22.  
Quantum meruit on substantial performance of. See Work and Labor, § 1.

#### BUILDING MATERIAL.

Duty to guard adjoining owners from falling tools and material. See Adjoining Land Owners, § 2.

#### BUILDING REGULATIONS.

Police power to make. See Constitutional Law, § 9.

#### BUILDING RESTRICTIONS.

Covenants creating. See Covenants, § 3.  
Building in violation of fire limits ordinance may be declared a crime. See Criminal Law, § 1.  
In deeds. See Deeds, § 17.  
Enjoining breach of. See Injunction, § 7.

#### BUILDINGS.

Right to soil support for. See Adjoining Land Owners, § 1.  
Subject to arson. See Arson, § 2.  
Right to replevin building detached from soil. See Replevin, § 2.

#### BULK SALES.

Of merchandise. See Fraudulent Conveyances, § 6.

#### BUNCO GAMES.

See False Pretenses.

Bunco-men as vagrants. See Vagrancy, § 2.

#### BURDEN OF PROOF.

In criminal cases. See Criminal Law, § 21.  
In civil cases. See Evidence, § 7.

#### BURGLARY.

NATURE AND ELEMENTS OF OFFENSE, § 1.  
BREAKING, § 2.  
ENTRY, § 3.  
BREAKING AND ENTRY, § 4.  
INDICTMENT, § 5.  
EVIDENCE, § 6.  
TRIAL AND SENTENCE, § 7.  
Consent or entrapment as defense. See Criminal Law, § 7.  
Admissibility of evidence of possession of stolen property. See Criminal Law, § 23.



**Killing in perpetrating burglary as homicide.**  
See Homicide, § 10.

### § 1. Nature and Elements of Offense.

Definition. 2: 383.  
Character of offense. 2: 383.  
Essentials of crime. 2: 383.  
Breaking and entering. 2: 383.  
Actual breaking. 2: 383.  
Instances of breaking. 2: 383.  
Instances not constituting breaking.  
2: 385.  
Breaking out. 2: 386.  
Constructive breaking. 2: 387.  
Consent of owner—Connivance. 2:  
387.  
Breaking and entering may be at differ-  
ent times. 2: 388.  
Night-time. 2: 388.  
Dwelling-house. 2: 388.  
Curtilage. 2: 388.  
Intent to reside in house. 2: 389.  
Intent to return. 2: 389.  
Servant's occupation. 2: 389.  
Separate families in same house. 2:  
389.  
Lodgers. 2: 390.  
Guest at hotel. 2: 390.  
Mill-house, stable, cellar or storehouse.  
2: 390.  
Store. 2: 391.  
Intent. 2: 391.  
Instances of entering not constituting  
burglary. 2: 391.  
Accomplices. 2: 399.

### § 2. Breaking.

Definition. 139: 1047.  
Illustrations. 139: 1048.  
Breaking after entry without breaking.  
139: 1053.  
— Breaking out. 139: 1054.  
Breaking by unusual places of entry.  
139: 1057.

### § 3. Entry.

In general. 139: 1059.  
What constitutes. 139: 1059.  
Entry by instruments. 139: 1060.  
Entry of store open for business. 139:  
1061.

### § 4. Breaking and Entry.

Consent of owner—Knowledge of in-  
tended burglary. 139: 1061.  
— Entrapment by detectives. 139:  
1062.

By servants of owner. 139: 1063.  
By tenants of premises. 139: 1064.  
Constructive—In general. 139: 1064.  
— Fraud. 139: 1065.  
— Threats and intimidation. 139:  
1065.  
— Confederacy with house servants.  
139: 1066.

### § 5. Indictment.

Breaking and entering. 2: 393.  
Intent. 2: 393.  
Feloniously and burglariously. 2: 393.  
Night-time. 2: 394.  
Description and value of property. 2:  
394.  
Ownership of building. 2: 394.  
Corporate name. 2: 395.  
Actual occupier and others. 2: 395.  
Amendment. 2: 396.  
Joinder of offenses. 2: 396.

### § 6. Evidence.

Time of commission of offense. 2: 396.  
Intent. 2: 396.  
Particular room. 2: 397.  
Specific felony. 2: 397.  
Burglary tools. 2: 397.  
Possession of stolen property. 2: 397.  
Declarations of accused. 2: 398.  
Intoxication of accused to show want  
of intent. 2: 398.

### § 7. Trial and Sentence.

Instructions to jury. 2: 398.  
Verdict. 2: 399.  
Sentence. 2: 399.

## BURIAL.

Right to burial of the dead. See Dead  
Bodies, § 1.  
Power to punish criminally for burial in  
violation of law. See Criminal Law, § 1.

## BURNING.

As element of arson. See Arson, § 1.  
Burning property other than buildings and  
refusing to aid in the extinguishment of  
fires. See Fires.

## BURNING WILL.

As revocation. See Wills, § 18.

## BUSINESS.

Police power of cities to regulate. See  
Municipal Corporations, § 3.

**BUYER BEWARE.**

See Caveat Emptor.

**BUYER'S LIEN.**

Lien of purchaser of land. See Vendor and Purchaser, § 13.

**BY-BIDDING.**

At auction sales. See Auctions and Auctioneers, § 6.

**BY-LAWS.**

Of savings banks. See Banks and Banking, § 26.

Effect of change of by-laws on existing members of benefit societies. See Beneficial Associations, § 6.

Limitations on power of corporations to enact by-laws. See Corporations, § 9.

**CABLE.**

See Telegraphs and Telephones.

**CABLE CARS.**

See Street Railroads.

**CALAMITY.**

Presumption of survivorship of persons perishing in common calamity. See Death, § 2.

**CALLING ELECTION.**

See Elections, §§ 3, 4.

**CALLING STATIONS.**

Duty of carrier to notify passengers of arrival at destination. See Carriers, § 50.

**CALLS.**

For stock subscriptions. See Corporations, § 16.

For stock subscription necessary to start statute of limitations. See Limitation of Actions, § 3.

**CALLS IN BOUNDARIES.**

Controlling calls. See Boundaries, §§ 4-6.

**CANCELLATION.**

Of revenue stamps. See Internal Revenue, § 1.

**CANCELLATION OF INSTRUMENTS.**

INSTRUMENTS SUBJECT TO CANCELLATION, § 1.

— INSTRUMENTS EXECUTED TO DEFRAUD CREDITORS, § 2.

— GROUNDS FOR CANCELLATION, § 3.

— MISTAKE CONSTITUTING, § 4.

— UNDUE INFLUENCE, § 5.

DEFENSES, § 6.

ADEQUATE REMEDY AT LAW AS BAR, § 7.

See, also, Reformation of Instruments and references under Rescission.

Of entry on public land. See Public Lands, § 2.

Cancellation of will by mistake of testator. See Wills, § 19.

**§ 1. Instruments Subject to Cancellation.**

Deed, the object of which is to evade the law or accomplish an unlawful purpose. 7: 587, 588.

**§ 2. — Instruments Executed to Defraud Creditors.**

Refusal of relief to parties to the instrument. 3: 728-740.

Right of estate of party to impeach or defend on ground of fraud. 3: 740-742.

**§ 3. Grounds for Cancellation.**

Forgery. 92: 272-275.

**§ 4. — Mistakes Constituting.**

General rule. 117: 228.

Mistake must be mutual. 117: 230.

Mistakes for which cancellation may be had. 117: 232.

In inducement for contract. 117: 233.

In computing subject matter or consideration. 117: 236.

Date, term or expiration of obligation. 117: 237.

Name of parties or other persons. 117: 238.

Kind or character of consideration. 117: 238.

Legal effect of words used. 117: 238.

Kind of instrument necessary to carry out object. 117: 239.

Capacity in which party has signed. 117: 239.

Nature or character of estate intended to convey. 117: 240.

Identity or description of property. 117: 241.

Omission or inclusion of easements, exceptions, reservations or conditions in deeds or contracts and omitting seal. 117: 244, 245.

**§ 5. — Undue Influence.**

Presumption of undue influence where confidential relations exist. 21: 94-104.

**§ 6. Defenses.**

Carelessness as bar to relief. 32: 384-387.

**§ 7. Adequate Remedy at Law as Bar.**

What constitutes adequate remedy. 9: 859.

Effect of existence of complete defense at law. 9: 859.

**CANCELING WILL.**

Revocation by. See Wills, § 18.

By mistake. See Wills, § 19.

**CANDIDATES.**

Effect of ineligibility of candidate receiving majority votes. See Elections, § 1.

Right to vote for candidate whose name is not on ballot. See Elections, § 2.

**CANVASS OF VOTES.**

Irregularities in. See Elections, § 3.

**CAPACITY.**

To commit crime. See Criminal Law, § 8.

To make a will. See Wills, § 11.

To make nuncupative will. See Wills, § 10.

Of witness. See Witnesses.

**CAPITAL STOCK.**

Of corporations. See Corporations, § 11.

**CAPTAIN.**

Of ship as vice-principal. See Master and Servant, § 19.

**CARD GAMES.**

As gambling games. See Gaming, §§ 4, 5.

**CARDS.**

As gambling devices. See Gaming, §§ 4, 5.

**CARE.**

Presumption of due care. See Negligence, § 19.

**CAR INSPECTOR.**

As vice-principal. See Master and Servant, § 20.

**CARNIVALS.**

Street carnivals. See Municipal Corporations, § 22.

**CAR-REPAIRERS.**

Foreman of, as vice-principal. See Master and Servant, § 19.

**CARRIAGES.**

Exempt from execution. See Exemptions, § 8.

**CARRIERS.**

**I. IN GENERAL, §§ 1-4.**

**II. CARRIAGE OF GOODS, §§ 5-28.**

**III. CARRIAGE OF LIVESTOCK, §§ 29-32.**

**IV. CARRIAGE OF PASSENGERS, §§ 33-56.**

**V. BAGGAGE, §§ 57-65.**

See, also, Railroads; Street Railroads.

State regulation of interstate carriers. See Commerce, § 1.

Liability of goods in hands of carriers to garnishment. See Garnishment, § 4.

Regulation of transportation of dead bodies. See Health, § 2.

Combinations between carriers. See Monopolies, § 1.

Transportation as necessary of life within meaning of anti-trust law. See Monopolies, § 1.

Diligence required of carrier to preserve human life. See Negligence, § 2.

Liability of manufacturer of passenger elevator to third persons for negligence. See Negligence, § 9.

Stoppage in transitu by shipper. See Sales, § 17.

Rights, duties and liabilities of part owners of vessels and the law of demurrage as applied to carriage by water. See Shipping, §§ 1-4.

Right of city to prohibit carriage of freight, express or mail on street-cars. See Street Railroads, § 1.

Cold storage by. See Warehousemen, § 3.

**I. IN GENERAL.**

KINDS OF CARRIERS, § 1.

STATE REGULATION OF RATES, § 2.

DISCRIMINATION, § 3.

RELATION OF EXPRESS COMPANIES AND THEIR SERVANTS TO OTHER CARRIERS, § 4.

**§ 1. Kinds of Carriers.**

Distinction between common and private carriers. 130: 34.

**§ 2. State Regulation of Rates.**

Evolution and diminution of doctrine announced in *Munn v. Illinois*. 62: 289-304.

**§ 3. Discrimination.**

Unreasonable and unlawful discrimination. 11: 647, 651.

When just and lawful. 11: 649.

Favoring passengers purchasing tickets at office. 11: 650.

Between express companies. 11: 653.

Constitutional and statutory provisions. 11: 654.

#### § 4. Relation of Express Companies and Their Servants to Other Carriers.

- Duty of carriers to furnish express facilities. 62: 513.
- Contracts between carrier and express company. 62: 513.
- Duty of carrier to transport goods of express company. 62: 514.
- Carrier not bound to furnish equal facilities to all express companies. 62: 519.
- Duty of carrier to carry express messenger. 62: 519.
- Right of railroad to do its own express business. 62: 519.
- Contract to transport express matter. 62: 519.
- Status of express messenger. 62: 519.
- Limitation of liability for express matter. 62: 521.
- Common carrier as private carrier. 62: 522.
- Primary liability of express company. 62: 525.

## II. CARRIAGE OF GOODS.

### DUTIES OF EXPRESS COMPANIES AS CARRIERS, § 5.

- LOSS OR INJURY TO GOODS, § 5½.
- LIABILITY OF LESSOR RAILROAD, § 6.
- BILLS OF LADING, § 7.
- RIGHTS AND LIABILITIES OF ASSIGNEES, § 8.
- SAME, § 9.
- STIPULATIONS WHICH CARRIER MAY NOT EXACT, § 10.
- DELIVERY BY CARRIER, § 11.
- ADVERSE CLAIMS TO PROPERTY, § 12.
- LIABILITY FOR LOSS CAUSED BY DELAY, § 13.
- DEMURAGE, § 14.
- LIABILITY FOR NEGLIGENCE OF CONNECTING CARRIER, § 15.
- BURDEN OF PROOF BETWEEN CONNECTING CARRIERS, AS TO WHO IS LIABLE FOR LOSS OR INJURY, § 16.
- LIABILITY AS WAREHOUSEMEN, § 17.
- LIMITATION OF LIABILITY—IN GENERAL, § 18.
- CONFLICT OF LAWS GOVERNING, § 19.
- STATUTORY PROVISIONS, § 20.
- VALIDITY AND EFFECT OF CONTRACT LIMITING LIABILITY, § 21.
- CONSTRUCTION OF STIPULATIONS, § 22.
- NOTICES AS CONTRACTS LIMITING LIABILITY, § 23.
- ASSENT OF SHIPPER, § 24.
- CONSIDERATION, § 25.
- REASONABLENESS, § 26.
- BURDEN OF PROOF, § 27.

— POWER TO LIMIT LIABILITY TO A SUM LESS THAN THE INJURY SUSTAINED, § 28.

#### § 5. Duties of Express Companies as Carriers.

- Express companies are common carriers. 61: 360.
- Duty of railroad to carry express matter. 61: 361.
- General duties and liabilities. 61: 362.
- Limitation of liability. 61: 363.
- By receipt or bill of lading. 61: 364.
- By notice. 61: 366.
- Limiting amount of liability to valuation. 61: 366.
- Limiting liability over connecting lines. 61: 371.
- Limiting time to present claim. 61: 370.
- Delivery to company. 61: 372.
- Delivery to consignee. 61: 374.
- Goods sent C. O. D. 61: 379.
- Delay and damages therefor. 61: 379.
- Charges and liens. 61: 380.
- Liability for acts of agents. 61: 381.
- Actions against. 61: 382.

#### § 5½. Loss or Injury to Goods.

- Liability for damage to goods ordered for special purpose or present use. 131: 179.
- Right of shipper to waive tort and sue carrier in assumpsit. 134: 195.

#### § 6. Liability of Lessor Railroad.

- Liability of lessor railroad for loss or injury to goods transported by lessee. 58: 148.
- Liability of lessor railroad for refusal of lessee to receive and transport goods. 58: 148.

#### § 7. Bills of Lading.

- General nature and characteristics. 105: 334.
- Negotiability. 105: 336.
- Effect of word "non-negotiable" on bill. 105: 338.
- Statutes affecting. 105: 338.

#### § 8. — Rights and Liabilities of Assignees.

- Assignability of bill in general. 105: 339.
- When issued in duplicate or triplicate. 105: 340.

**Methods of assigning bill—In general.** 105: 341.

— Mere delivery. 105: 341.

— Indorsement in blank. 105: 342.

— Statutes regulating. 105: 343.

Who may assign bill. 105: 343.

— Fraudulent holder. 105: 343.

Duty to ascertain title of assignor. 105: 344.

Rights dependent on time of transfer. 105: 344.

General rights and liabilities. 105: 345.

Distinction between rights and liabilities. 105: 346.

Right of carrier to rescind bill after assignment. 105: 346.

Liability of assignee for freight charges. 105: 346.

Effect of recitals in bill. 105: 347.

— Description of goods. 105: 352.

— Recital of receipt of goods. 105: 355.

— Where bill is issued through fraud or mistake. 105: 356.

Lost or stolen bill. 105: 357.

Forged or altered bill. 105: 358.

On delivery of goods to another without requiring production of bill. 105: 360.

As against right of stoppage in transitu. 105: 362.

Against carrier for failure to deliver. 105: 362.

Effect of custom and usage of carrier. 105: 361.

Where bill of lading is accompanied by bill of exchange or assigned to secure advances. 105: 367.

Right of assignee to sue. 105: 374.

Law governing construction of assignment. 105: 375.

**§ 9. — Same.**

Liability of assignee of bill of lading with draft attached to consignee for failure of title to or defect in goods or failure of consideration. 91: 212-216.

**§ 10. — Stipulations Which Carrier may not Exact.**

Stipulations contrary to law. 13: 782.

Limiting liability for negligence. 13: 783.

Unreasonable stipulations. 13: 784-786.

**§ 11. Delivery by Carrier.**

To real consignee or his agent. 9: 511.

To person producing bill of lading. 9: 512.

Usage as affecting. 9: 513.

Liability for delivery to wrong person. 9: 513.

**§ 12. — Adverse Claims to Property.**

Duty of carrier when adverse claim is set up to property in its possession. 34: 731.

Seizure under legal process as excuse for nondelivery. 34: 735.

**§ 13. Liability for Loss Caused by Delay.**

In general. 11: 360.

Act of God. 11: 362.

Strikes, riots and mobs. 11: 365.

Measure of damages. 11: 366.

**§ 14. Demurrage.**

Right of carrier to make and collect charges for detention of cars by consignee. 44: 921-927.

Reasonableness of charge. 44: 926.

Lien of carrier. 44: 926.

**§ 15. Liability for Negligence of Connecting Carrier.**

Where there is no special contract. 106: 604, 605.

Where there is a contract for through transportation—In general. 106: 606.

— Payment of freight as showing through contract. 106: 607.

— Joint liability when one freight is paid. 106: 608.

Where there is concurring negligence. 106: 608.

Where car is defective or improperly equipped. 106: 609.

**§ 16. Burden of Proof as Between Connecting Carriers as to Who is Liable for Loss or Injury.**

First or initial carrier. 101: 392.

Intermediate carrier. 101: 394.

Last or terminal carrier. 101: 394.

— Loss of goods. 101: 396.

— Particular kinds of goods. 101: 397.

- Goods delivered by expressman. 101: 397.
- Shipments in through sealed cars. 101: 398.

Rebuttal of presumptions. 101: 399.

### § 17. Liability as Warehousemen.

Commencement of liability as carrier. 97: 84.

Termination of liability as carrier. 97: 87.

Arrival of goods and unloading cars. 97: 88.

Storage in depot or warehouse. 97: 90.

Removal of goods by consignee. 97: 91.

Notice of arrival of goods. 97: 93.

Delay or stoppage in transitu. 97: 95.

Goods in hands of connecting carrier. 97: 95.

Goods transported by water. 97: 99.

Goods transported by express. 97: 100.

Baggage and effects of passengers. 97: 101-105.

### § 18. Limitation of Liability—In General.

Liability at common law in absence of special contract. 88: 77.

History of right to limit liability by contract. 88: 77.

Right of carrier to exact special contract limiting liability. 46: 777-780.

### § 19. — Conflict of Laws Governing.

General rule. 88: 125.

Where contract is made and partly performed in another state. 88: 125.

Proof of assent to terms of bill of lading. 88: 126.

Doctrine of federal courts. 88: 127.

Where opposed to public policy of forum. 88: 128.

— Stipulation that foreign law governs. 88: 128.

### § 20. Statutory Provisions.

Prohibiting limitation of liability. 88: 129.

— In receipts. 88: 130.

Requiring express contract. 88: 131.

Requiring signatures of parties. 88: 131.

Losses of connecting lines. 88: 132.

Amount of recovery. 88: 132.

Stipulation for notice of claim. 88: 133.

Limiting time to sue. 88: 133.

Constitutionality. 88: 133.

### § 21. — Validity and Effect of Contract Limiting Liability.

Does not affect character of carrier as such. 88: 94.

Losses caused by negligence of carrier. 88: 95.

— Gross negligence. 88: 97.

For whose acts initial carrier is liable. 88: 101.

Loss by fire. 88: 103.

Loss from breakage or delay. 88: 104.

Limitation of amount recoverable. 88: 105.

Stipulation for notice of claim for loss or injury. 88: 113.

Waiver of performance of stipulations. 88: 117.

Estoppel of carrier to demand performance of stipulation. 88: 118.

### § 22. — Construction of Stipulations.

Strictly against carrier. 88: 118.

Construed not to cover results of negligence. 88: 119.

Applicable only to claims arising on bill of lading. 88: 120.

Inapplicable to claims for delay. 88: 120.

### § 23. — Notices as Contracts Limiting Liability.

Notices to shippers in general. 5: 719.

Notice limiting common-law liability. 5: 720.

Effect of actual knowledge of shipper of terms of notice. 5: 723.

Carrier's liability may be limited by express contract. 5: 725.

Limitation of liability must be reasonable. 5: 725.

Limiting liability for negligence by notice. 5: 726.

Burden of proving notice. 5: 729.

### § 24. — Assent of Shipper.

General rule requiring. 88: 78.

What is evidence of. 88: 79.

Signing bill of lading not necessary. 88: 80.

Acceptance of bill of lading. 88: 80.  
 Failure to read bill immaterial. 88: 82.  
 Inability to read immaterial. 88: 83.  
 Receipt of bill after shipment. 88: 84, 85.  
 Previous dealings with carrier. 88: 86.  
 To stipulations on back of bill. 88: 86.  
 Who may give assent as agent of shipper. 88: 87.

#### § 25. — Consideration.

Necessity. 88: 88.  
 What constitutes—Acceptance of shipment. 88: 88.  
 — Acceptance of dangerous or unusual articles. 88: 89.  
 — Reduction of rates sufficient. 88: 89.  
 Presumption of. 88: 90.  
 Right to show want of. 88: 90.

#### § 26. — Reasonableness.

Contract must be reasonable. 88: 91.  
 Carrier has burden to show. 88: 92.  
 Shipper must have option to ship without limit on liability. 88: 93.  
 — What is sufficient option. 88: 93.

#### § 27. — Burden of Proof.

Carrier must bring loss within exemptions. 88: 121.  
 As to negligence of carrier—Conflict of authority. 88: 121.  
 — Doctrine that carrier must show lack of negligence. 88: 122.  
 — Doctrine that shipper must show negligence. 88: 123.  
 — Where shipper accompanies shipment. 88: 124.

#### § 28. — Power to Limit Liability to a Sum Less Than the Injury Sustained.

Decisions upholding power and extending limitation to cover loss by negligence of carrier. 23: 595.  
 Decisions denying right of carrier to limit liability for loss by negligence. 23: 595.  
 Tendency of recent decisions to modify the rule. 23: 596.  
 Fraud of shipper defeats recovery. 23: 597.

Index-Digest—4

Limiting liability for loss without negligence. 23: 598.

### III. CARRIAGE OF LIVESTOCK.

DUTY OF CARRIER, § 29.

LOSS OR INJURY, § 30.

FOR WHAT ACTS CARRIER IS LIABLE, § 31.

ASSUMPTION OF RISK AND CONTRIBUTORY NEGLIGENCE, § 32.

#### § 29. Duty of Carrier.

Livestock carriers are common carriers. 63: 548.

Duty to receive and transport. 63: 549.

Facilities for transportation. 63: 551.

Stockpens and yards. 63: 552.

Safe and suitable cars. 63: 553.

Feed and water in transit. 63: 554.

Bedding and ventilation of cars. 63: 558.

Duty in loading and unloading. 63: 558.

Duty to prevent escape. 63: 560.

Duty of general supervision. 63: 561.

Duty to avoid unreasonable delay. 63: 563.

Connecting carriers. 63: 564.

Vessels and ferries. 63: 565.

Limitation of liability. 63: 565, 566.

#### § 30. Loss or Injury.

Liability as common carrier. 130: 433-435.

Applying law applicable to carrier of inanimate freight. 130: 435.

Natural propensities of stock as relieving liability. 130: 438.

Reasons for application of rule different from that applying to inanimate freight. 130: 439.

Right of carrier to limit liability by special contract. 130: 445.

Burden of proving that loss or injury is within exemption from liability as an insurer. 130: 442.

Liability of initial carrier for negligence or torts of connecting carrier. 106: 609.

#### § 31. For What Acts Carrier is Liable.

Loss or injury arising from kind or quality of transportation facilities. 130: 446.

Mode or manner of transportation, feeding and watering. 130: 450-452.

Delay in transportation. 130: 455.  
Improper delivery. 130: 460.

**§ 32. Assumption of Risk and Contributory Negligence of Shipper.**

In general. 130: 461.

Acts relative to the transportation facilities. 130: 461.

Acts relative to the mode of transportation or delivery. 130: 462.

**IV. CARRIAGE OF PASSENGERS.**

IN GENERAL, § 33.

TICKETS, § 34.

— BINDING EFFECT OF CONDITIONS ON UNSIGNED TICKETS, § 35.

— NOTICES ON TICKETS AS CONTRACTS LIMITING LIABILITY, § 36.

— POWER OF STATE TO REGULATE SALE AND USE, § 37.

WHO ARE PASSENGERS, § 38.

WHO ARE PASSENGERS ON STREET CARS, § 39.

WHO MAY BE REFUSED TRANSPORTATION, § 40.

DUTIES AND LIABILITIES OF STREET RAILROADS TO PASSENGERS, § 41.

LIABILITY OF LESSOR RAILROAD, § 42.

LIABILITY OF CARRIER HAULING CARS OWNED BY OTHERS UNDER SPECIAL CONTRACT, § 43.

LIABILITY FOR INJURIES BY THIRD PERSONS, § 44.

— BY STRIKERS AND MOBS, § 45.

LIABILITY OF INITIAL CARRIER FOR NEGLIGENCE OF CONNECTING CARRIER, § 46.

DUTY TO FURNISH SEATS FOR PASSENGERS, § 47.

SAME, § 48.

DUTY TO PROTECT PASSENGER FROM ASSAULT, § 49.

DUTY TO INFORM AND WARN PASSENGER, § 50.

PROJECTING PART OF BODY OUT OF CAR WINDOW AS CONTRIBUTORY NEGLIGENCE, § 51.

EJECTION FROM TRAIN, § 52.

SLEEPING-CAR COMPANIES, § 53.

— DUTIES AND LIABILITIES, § 54.

PASSENGER ELEVATORS, § 55.

— LIABILITY OF OWNERS, § 56.

**§ 33. In General.**

Right to grant exclusive privileges to hackmen and other solicitors. 22: 699-702.

Duty to keep stations, platforms and approaches safe. 29: 55, 56.

Duty and care required toward persons assisting passengers. 29: 54, 55.

Presumption of negligence from accident resulting in injury to passenger. 113: 1020-1031.

Liability for negligence, mistakes and misrepresentations of ticket agents. 122: 638-646.

Whether a servant of a car owner is bound by a contract between his master and a railway company exempting the latter from liability while hauling the car. 130: 47.

**§ 34. Tickets.**

Ticket as evidence of contract. 99: 367.

Conditions on ticket. 99: 368, 369.

Notice limiting liability for baggage. 99: 362.

**§ 35. — Binding Effect of Conditions on Unsigned Tickets.**

Inferior ticket given when first-class is ordered. 84: 397.

Time limitations on first-class tickets. 84: 397.

Notice of condition must be proved. 84: 399.

Conditions respecting baggage. 84: 401.

Tickets for ocean voyages. 84: 402.

Tickets issued at special rates. 84: 402.

Tickets intended to be signed—Failure to sign when there is a blank space. 84: 403.

— Conditions in passes not signed. 84: 404.

— Mileage tickets. 84: 405.

— Excursion tickets. 84: 405.

— Carrier cannot take advantage of his neglect to procure signature. 84: 406.

**§ 36. — Notices on Tickets as Contracts Limiting Liability.**

Effect of notices or conditions on tickets. 5: 719.

Passenger tickets or checks as mere vouchers. 5: 723.

Effect of actual knowledge by passenger of terms of notices. 5: 723.

Notice as making contract in favor of passenger. 5: 726.

Notices restricting liability for torts or negligence. 5: 728.

Burden of proving notice. 5: 729.

**§ 37. — Power of State to Regulate Sale and Use.**

As exercise of police power. 96: 828.



Interstate commerce. 96: 830.  
 Due process and equal protection of law.  
     96: 831.  
 Class legislation. 96: 833.  
 To whom statutes apply. 96: 833.

### § 38. Who are Passengers.

Definition. 61: 75.  
 Commencement of relation. 61: 75.  
 Necessity for contract of carriage. 61:  
     76.  
 Who are not passengers. 61: 77.  
 Presumptions. 61: 78.  
 Purchase of ticket creates relation. 61:  
     79.  
 Waiting for train. 61: 80.  
 Boarding train. 61: 82.  
 Boarding wrong train. 61: 82.  
 Accepting unauthorized invitation to  
     ride. 61: 83.  
 — From engineer, haggageman or  
     section boss. 61: 84.  
 Payment of fare in advance. 61: 85.  
 Free transportation. 61: 87, 88.  
 Drivers or stockmen. 61: 89.  
 Place of riding. 61: 90.  
 Riding on freight train. 61: 91.  
 Street-cars. 61: 96.  
 Persons assisting passengers. 61: 97.  
 Servants of carrier. 61: 97.  
 Express messengers. 61: 98.  
 Mail clerks. 61: 99.  
 Children traveling with parents. 61:  
     100.  
 Excursion or limited tickets. 61: 101.  
 Connecting lines. 61: 103.  
 Person procuring passage through  
     fraud. 61: 104.

### § 39. Who are Passengers on Street-cars.

Before reaching car. 104: 585.  
 Entering or attempting to enter car—  
     Knowledge of conductor or  
     motorman. 104: 585.  
 — Action taken for purpose of en-  
     tering. 104: 586.  
 Person attempting to enter moving car.  
     104: 587.  
 Person transferring from one car to an-  
     other. 104: 587.  
 Entering or riding on crowded car.  
     104: 588.  
 Place of riding. 104: 588.  
 Being on car without intending to be-  
     come passenger. 104: 588.  
 After leaving car. 104: 589.

### § 40. Who may be Refused Transportation.

In general. 107: 299.  
 Drunken persons. 107: 299.  
 Bad character or habits. 107: 300.  
 Blind persons. 107: 301.  
 Sick or infirm persons. 107: 302.  
 Insane persons. 107: 302.

### § 41. Duties and Liabilities of Street Railroads to Passengers.

Street railroads as common carriers of  
     passengers. 118: 461.  
 Relation of passenger and carrier. 118:  
     462.  
 Termination of relation. 118: 463.  
 Performance of contract of transporta-  
     tion. 118: 464.  
 Transfers to connecting lines. 118:  
     464.  
 Degree of care required—In general.  
     118: 465.  
 — To persons under disability. 118:  
     466.  
 Acts and omissions of servants. 118:  
     466.  
 Acts of fellow-passengers and others.  
     118: 468.  
 Condition and use of premises. 118:  
     469.  
 Sufficiency and safety of means of  
     transportation. 118: 469.  
 Taking up passengers. 118: 470.  
 Discharging passengers. 118: 471.  
 Incidental injuries. 118: 474.  
 Management of conveyance—In general.  
     118: 476.  
 Overloading cars. 118: 476.  
 Sudden jolts. 118: 477.  
 Speed. 118: 478.  
 Passing vehicles and collisions. 118:  
     478.  
 Contributory negligence of passenger.  
     118: 479.  
 — Occupying dangerous position.  
     118: 480.  
 Ejection of passenger. 118: 482.  
 Proximate cause of injury. 118: 482.

### § 42. Liability of Lessor Railroad.

Liability of lessor railroad for acts of  
     lessee or injuries due to defects  
     in roadbed, depots and grounds.  
     58: 148.

**§ 43. Liability of Carrier Hauling Cars Owned by Others Under Special Contract.**

Basis of nonliability. 130: 35.  
Circus trains and the like. 130: 35.  
Drawing-room and sleeping cars. 130: 38.  
Cars of initial carrier. 130: 47.

**§ 44. Liability for Injuries by Third Persons.**

General principles. 6: 734.  
Duty to guard passengers from injury by fellow-passengers or others. 6: 735-737.

**§ 45. — By Strikers and Mobs.**

As insurer. 97: 526.  
Incidental risks. 97: 527.  
Knowledge or anticipation of wrongful act. 97: 528.  
Diligence required of passengers. 97: 531.  
Duty of carrier to run cars during strikes. 97: 531.

**§ 46. Liability of Initial Carrier for Negligence of Connecting Carrier.**

In general. 106: 610.  
Special contract for through transportation. 106: 610.  
Where several carriers form a single system. 106: 611.  
Agreements limiting liability. 106: 612.

**§ 47. Duty to Furnish Seats for Passengers.**

In general. 4: 779.  
Right of passenger to keep seat. 4: 780.  
Duty to pay fare though not furnished seat. 4: 780.

**§ 48. Same.**

General duty to furnish. 136: 312.  
Excuse for failure to furnish. 136: 313.  
Right of passenger to demand. 136: 314.  
Refusal to pay fare until furnished. 136: 314.  
Duty to pay fare or leave train. 136: 315.  
Ejection from train on refusal. 136: 315.

Remedy of passenger refused seat. 136: 315.

**§ 49. Duty to Protect Passenger from Assault.**

Liability for assaults by other passengers. 32: 90.  
Care required to protect passenger. 32: 91-94.  
When carrier is not liable. 32: 95.  
Liability for assaults by servants. 32: 95.  
Liability for arrest made by servant. 32: 100.  
Liability for assault on female passenger. 32: 101.  
Not liable for assault provoked by passenger. 32: 101.

**§ 50. Duty to Inform and Warn Passenger.**

Right to assume ordinary intelligence and prudence. 7: 830.  
Care required of passenger to avoid injury. 7: 831.  
Dangers arising from unusual conditions. 7: 831.  
Location and way to reach train. 7: 831.  
Time and place to alight. 7: 832, 833.  
When train is running out of time. 7: 834.  
Passenger taking exposed position. 7: 835.  
Signal of departure of train. 7: 835.  
Duty to wake sleeping passenger. 7: 836.  
Duty to persons assisting passengers. 7: 836.

**§ 51. Projecting Part of Body Out of Car Window as Contributory Negligence.**

Steam railroad. 116: 721.  
Street railroad. 116: 723.  
Caused by jolt of car. 116: 723.  
Leaning elbow on sill of window. 116: 723.

**§ 52. Ejection from Train.**

Rule that ejection is breach of contract. 122: 639.  
Rule that ejection is tort which passenger may resist. 122: 639.  
Defects in ticket, failure to obtain ticket and loss of ticket. 122: 641-645.  
Ejection from street-car. 122: 645.

Right of passenger to forcibly resist unlawful ejection. 125: 727-731.

On refusal to pay fare because not furnished seat. 136: 315.

### § 53. Sleeping-car Companies.

Duties and liabilities in general. 5: 34.

Nature of contract with passenger. 5: 34.

Care required of passenger's property. 5: 35.

Liability for injury to passenger. 5: 36.

### § 54. — Duties and Liabilities.

In general. 26: 331.

Are not common carriers or innkeepers. 26: 332.

Liability for failure to exercise reasonable care. 26: 333.

Liability for negligence. 26: 334.

Negligence not presumed from mere fact of loss. 26: 335.

Contributory negligence of carrier. 26: 336.

Theft by servants of company. 26: 336.

Extent of liability. 26: 337.

Money or property in custody of passenger. 26: 337.

Notice posted in car disclaiming liability. 26: 338.

Duty to furnish berths to passengers. 26: 338.

Duty to furnish continuous passage in same car or in one equally good. 26: 339.

Contract implied from sale of ticket. 26: 339.

Right of day passenger to enter sleeping-car. 26: 339.

Liability to person riding on free pass. 26: 340.

Liability for refusal to recognize passenger's rights on loss of regular ticket. 26: 340.

### § 55. Passenger Elevators.

Presumption of negligence from falling. 113: 1030.

### § 56. — Liability of Owners.

Degree of care required. 56: 806.

Right to assume that care was exercised. 56: 807.

As common carrier of passengers. 56: 807.

Duty to provide skillful operators. 56: 807.

Accidents and injuries. 56: 808.

Passengers on freight elevators. 56: 809, 810.

## V. BAGGAGE.

IN GENERAL, § 57.

WHAT CONSTITUTES, § 58.

DELIVERY, § 59.

LIABILITY OF CARRIER AS WAREHOUSEMAN, § 60.

LIMITATION OF LIABILITY, § 61.

CONNECTING CARRIERS, § 62.

LIABILITY OF CARRIER FOR LOSS OR INJURY, § 63.

— MEASURE OF DAMAGES, § 64.

— ACTIONS, § 65.

### § 57. In General.

Authority of baggage-master. 99: 380.

Rules of carrier regulating. 99: 381.

Necessity for payment of fare in advance. 99: 383.

When baggage should be sent. 99: 383.

Necessity that passenger go on same train. 99: 384.

### § 58. What Constitutes.

In general. 99: 347.

Ownership. 99: 348.

Wearing apparel. 99: 348.

Money. 99: 348.

Valuable documents. 99: 350.

Jewelry. 99: 350.

Tools and surgical instruments. 99: 350.

Bedding and household goods. 99: 350.

Weapons. 99: 350, 351.

Books and manuscripts. 99: 351.

Dogs. 99: 352.

Miscellaneous articles. 99: 353.

Merchandise—Is not baggage. 99: 354.

— May be by agreement. 99: 355.

— Effect of rule of carrier against receiving it. 99: 355.

Knowledge of character of property. 99: 356.

— Knowledge of agent. 99: 357.

— Duty to inquire as to contents. 99: 357.

— Disclosure of value. 99: 358.

Extra baggage. 99: 359.

### § 59. Delivery.

To carrier—Necessity. 99: 372.

— Custom as showing. 99: 373.

Retention of control by passenger—  
 Effect. 99: 375.  
 — Steamship companies as inn-  
 keepers. 99: 375.  
 To passenger. 99: 378, 399.  
 — Burden of showing. 99: 379.

#### § 60. Liability of Carrier as Warehouseman.

Commencement of liability as carrier. 97: 101.  
 Termination of liability as carrier. 97: 102.  
 Connecting and intermediate carriers. 97: 105.

#### § 61. Limitation of Liability.

How far carrier may limit liability. 99: 364.  
 Effect of general notice of nonliability. 99: 364.  
 By contract generally. 99: 365.  
 Ticket as contract. 99: 366.  
 Opportunity and ability to read contract. 99: 369.  
 Construction of conditions in contract. 99: 369.  
 Statute prohibiting limitation of liability. 99: 370.  
 Construction of statute limiting liability. 99: 371.

#### § 62. Connecting Carriers.

May contract beyond own line. 99: 359.  
 Limiting liability to own line. 99: 362.  
 Presumption where place of loss or injury is unknown. 99: 363.  
 Liability as warehousemen. 97: 105.  
 Liability of initial carrier for torts as negligence of connecting carrier. 106: 612.

#### § 63. Liability of Carrier for Loss or Injury.

Law governing. 99: 387.  
 As insurer. 99: 345.  
 As warehouseman. 99: 380.  
 Act of God or public enemy. 99: 346.  
 When liability attaches. 99: 371.  
 When liability ends. 99: 376.  
 Acts of servants. 99: 383.  
 Measure of damages. 99: 385.  
 Contributory negligence of passenger. 99: 380.

#### § 64. Measure of Damages.

For loss or destruction. 99: 385.

For delay. 99: 386.  
 Value at destination. 99: 386.

#### § 65. Actions.

Law governing. 99: 387.  
 What actions lie. 99: 387.  
 Who may sue—In general. 99: 388.  
 — Principal for baggage of agent. 99: 388.  
 — Partners or joint owners. 99: 389.  
 — Parent of infant passenger. 99: 390.  
 Burden of proof. 99: 390.  
 Admissibility of evidence—Baggage check. 99: 390.  
 — Statements of carrier's agent. 99: 391.  
 — Proof as to contents of trunk. 99: 392.

#### CARRYING AWAY.

As element of robbery. See Robbery, § 3.

#### CARS.

Liability of railroad company operating cars of other companies. See Railroads, § 12.

#### CAR SEATS.

Right of passenger to seat in car. See Carriers, §§ 47, 48.

#### CARTONS.

Form of, as trademark. See Trademarks and Trade Names, § 2.

#### CAR TRACKS.

See references under Tracks.

#### CASUAL CONNECTION.

Legal theory of. See Negligence, § 16.

#### CASUALTY INSURANCE.

See Insurance.

#### CATCHING FISH.

Right to catch fish. See Fish, § 2.

#### CATERERS.

Tools exempt from execution. See Exemptions, § 7.

#### CATTLE.

See Animals.

#### CATTLE-GUARDS.

Validity of law requiring railroads to construct. See Railroads, § 9.

**CAUSA MORTIS.**

Gifts causa mortis. See Gifts, § 3.

**CAVEAT EMPTOR.**

Application of doctrine to judicial sales. See Judicial Sales, § 8.  
Rule of. See Sales, § 7.

**CEMETERIES.**

Acquisition of title to cemetery ground by adverse possession. See Adverse Possession, § 1.  
Uses and trusts for. See Trusts, § 1.

**§ 1. Municipal Regulation.**

Limitations on power. 87: 678.  
What statutes confer power. 87: 679.  
Validity of regulations. 87: 680.

**§ 2. Prohibition and Discontinuance.**

When reasonable and valid. 87: 681.  
When unreasonable and void. 87: 681.  
As to persons who maintain and conduct. 87: 683.  
Enjoining invalid prohibition. 87: 683.  
Abolition or discontinuance. 87: 683.

**CERTAINTY.**

Required in charitable trust. See Charities, § 2.

**CERTIFICATES.**

Of acknowledgment. See Acknowledgment, §§ 3-5.  
Of deposit. See Banks and Banking, § 6.  
Of membership in mutual aid society. See Beneficial Associations, § 3.  
Of performance of contract. See Contracts, § 20.  
Of loss. See Insurance, § 36.  
Receivers' certificates. See Receivers, § 6.

**CERTIFIED CHECKS.**

Nature and essentials. See Banks and Banking, § 5.

**CERTIORARI.**

To try title to office. See Officers, § 12.

**§ 1. Nature and scope of writ.**

Office of the writ. 40: 29.  
— At common law. 40: 29.  
Existence of other remedy as bar. 40: 30.  
Purpose and scope of writ. 40: 30.

**§ 2. Who may Prosecute.**

Parties to proceeding reviewed. 103: 111.

Interest in proceedings reviewed. 103: 114-117.

**§ 3. Errors Reviewable.**

Errors otherwise reviewable. 40: 30.  
Errors of law. 40: 32.  
Discretionary orders. 40: 34.  
Questions of fact. 40: 34.  
Extrinsic evidence. 40: 35.  
Contempt cases. 40: 36.  
Nonjudicial questions—What are. 40: 36.  
Proceedings of county boards and city councils. 40: 38.  
Assessment and equalization of taxes. 40: 44.  
Election canvassing board. 40: 44.  
Removal from office. 40: 45.  
Ministerial acts of judicial officers. 40: 46.

**CHALLENGE.**

To grand jurors. See Grand Jury, § 1.

**CHAMPERTY AND MAINTENANCE.**

In contracts between attorney and client. See Attorney and Client, § 5.

**CHANCE.**

Games of chance. See Gaming; Lotteries.

**CHANCERY GUARDIANS.**

See Guardian and Ward, § 2.

**CHANCE VERDIOT.**

Invalidity of. See Criminal Law, § 56.

**CHANGE OF BENEFICIARY.**

Of mutual aid association. See Beneficial Associations, § 8.

**CHANGE OF DOMICILE.**

See Domicile, § 1.

**CHANGE OF GRADE.**

Liability for change of grade of street. See Municipal Corporations, § 27.

**CHANGE OF VENUE.**

See Venue.

**CHARACTER.**

Admissibility of evidence of good character of accused. See Criminal Law, § 27.  
Evidence of character of accused or deceased in homicide cases. See Homicide, §§ 15-17.

**CHARGES.**

Regulation of freight rates. See Carriers, § 2.  
Of express companies. See Carriers, § 5.  
Regulation of railroad rates. See Railroads, § 2.

**CHARITIES.**

WHAT ARE CHARITABLE USES AND TRUSTS, § 1.

CERTAINTY AND UNITY REQUIRED IN CHARITABLE TRUSTS, § 2.

VALIDITY OF BEQUESTS FOR MASSES, § 3.

LIABILITY OF CHARITABLE INSTITUTIONS FOR TORTS OF SERVANTS AND AGENTS, § 4.

Taxation for public charities. See Taxation, § 3.

**§ 1. What are Charitable Uses and Trusts.**

Definitions. 63: 248.

Statute of uses. 63: 252.

Benevolence, philanthropy and charity at large. 63: 256.

Cemeteries. 63: 257.

Education. 63: 258.

Hospitals, homes and poorhouses. 63: 262.

Religion. 63: 264.

Group of other charities. 63: 266.

Valid public charities. 63: 267.

Purposes which are not public. 63: 267.

Enforcement of trust. 63: 269.

**§ 2. Certainty and Unity Required in Charitable Trusts.**

In general. 64: 756.

Trusts held void because some of their objects were not charitable. 64: 757.

Requisite certainty. 64: 758.

Description of objects of trust. 64: 759.

Description of beneficiaries as a class. 64: 759, 767.

Trusts held void for want of definiteness in objects or beneficiaries. 64: 761.

Doctrine of cy pres. 64: 770.

**§ 3. Validity of Bequests for Masses.**

As a superstitious use. 65: 118.

American rule. 65: 119.

Charitable trusts for religious purposes. 65: 120.

Treated as direct gift for legal purpose. 65: 121.

Treated as private trusts. 65: 122.

**§ 4. Liability of Charitable Institutions for Torts of Servants and Agents.**

Rule of exemption from liability. 139: 894.

Reasons for the rule. 139: 895.

Effect of paying for care or attention. 139: 899.

Effect of exercising care in choosing agents. 139: 899.

To beneficiaries of charity. 139: 900.

To servants and strangers. 139: 901.

Hospitals, religious and educational institutions. 139: 905.

Reformatories and governmental agencies. 139: 906.

Fire insurance patrol. 139: 907.

**CHARTER.**

Effect of repeal of corporate charter. See Corporations, § 68.

Assault in defense of wife's chastity. See Assault and Battery, § 1.

Impeaching witness by showing want of. See Witnesses, § 15.

**CHATTEL MORTGAGES.**

IN GENERAL, § 1.

FORMAL REQUISITES, § 2.

DESCRIPTION OF PROPERTY, § 3.

EFFECT OF FAILURE TO RECORD, § 4.

MORTGAGE ALLOWING MORTGAGOR TO RETAIN POSSESSION AND SELL THE PROPERTY, § 5.

ON GROWING CROPS, § 6.

MORTGAGE OF AFTER-ACQUIRED PROPERTY, § 7.

TITLE AND RIGHTS AFTER BREACH OF CONDITION, § 8.

— OF MORTGAGEE, § 9.

MORTGAGOR'S REMEDIES AGAINST THIRD PERSONS AFTER CONDITION BROKEN, § 10.

FORECLOSURE, § 11.

REMEDIES OF MORTGAGOR ON WRONGFUL SALE, § 12.

MORTGAGEE'S RIGHT OF ACTION AGAINST THIRD PERSONS, § 13.

Filing. See Courts, § 8.

Capacity of infants to make. See Infants, § 1.

Of insane persons. See Insane Persons, § 4.

Conditional sales. See Sales, §§ 18-22.

**§ 1. In General.**

Definitions. 137: 472.

Effect of failure to execute as prescribed by statute. 137: 471-486.

Necessity for delivery of copy of mortgage. 137: 486.

**§ 2. Formal Requisites.**

Statutory requisites. 137: 473.

Signature. 137: 474.

Seal. 137: 475.  
 Attestation. 137: 475.  
 Acknowledgment. 137: 476.  
 Affixing revenue stamps. 137: 478.  
 Verification. 137: 479.

**§ 3. Description of Property.**

General rule as to sufficiency of description. 14: 239.  
 Illustrations. 14: 239, 240, 242.  
 Must state location of property. 14: 241.  
 As to third persons. 14: 242.  
 — Must furnish data for separating mortgaged property from a mass of similar articles. 14: 243.  
 — False and incorrect description annuls mortgage. 14: 245.  
 Construction and effect of general description. 14: 246.  
 Growing crops. 14: 246.

**§ 4. Effect of Failure to Record.**

In general. 137: 486.  
 As between parties and their privies. 137: 489.  
 As to third persons. 137: 491.  
 As to time of recording. 137: 492.  
 As to place of recording. 137: 492.  
 Persons bound to record. 137: 493.

**§ 5. Mortgage Allowing Mortgagor to Retain Possession and Sell the Property.**

Valid as between the parties. 15: 913.  
 Void as to creditors. 15: 913.  
 Rule in various states. 15: 913-917.

**§ 6. On Growing Crops.**

Effect of severance from land on lien under mortgage. 18: 770.

**§ 7. Mortgage of After-acquired Property.**

General rule. 109: 510.  
 As against creditors. 109: 511.  
 As between the immediate properties. 109: 511.  
 Property to take the place of that owned by the mortgagor. 109: 512.  
 Cases affirming general validity. 109: 512.  
 Expression of intention to cover after-acquired property. 109: 513.  
 Property acquired on conditional sale. 109: 513.

Subrogation of mortgagee's rights to existing liens and interests. 109: 513.

In equity—General validity. 109: 514.

— Mode of construing and giving effect to. 109: 514.

Effect of taking possession. 109: 516.

After-acquired stock of goods. 109: 518.

— Denial as against creditors. 109: 519.

Unplanted crops—Validity and operation. 109: 520.

— Necessity that property exist potentially. 109: 522.

Animals and their increase. 109: 523.

**§ 8. Title and Rights After Breach of Condition.**

Legal title, ownership and possession of mortgaged chattels after condition broken. 137: 893.

Rights of mortgagor after condition broken. 137: 894, 895.

**§ 9. — Of Mortgagees.**

Legal title of mortgagee. 96: 682.

Right of mortgagee to possession. 96: 684.

— Effect of setoff. 96: 685.

— Use of force to obtain possession. 96: 685.

— Provisions in mortgage. 96: 686.

— Sureties as mortgagees. 96: 687.

Where mortgage is due upon a contingency. 96: 687.

Mortgage to secure different debts. 96: 688.

Death of mortgagor. 96: 688.

Mortgagor as bailee after default. 96: 689.

Rights of mortgagee as against levying officer. 96: 689.

Remedies of mortgagee—Absolute owner for purpose of suit. 96: 690.

— Replevin. 96: 690.

— Detinue. 96: 691.

— Trover. 96: 691.

— Foreclosure and sale. 96: 692.

Effect of tender by mortgagor. 96: 691.

Partial payments. 96: 691.

Right to foreclosure and sale. 96: 692.

Rights between mortgagees when mortgage is given to secure debts owing to different persons. 96: 692.

### § 10. Mortgagor's Remedies Against Third Persons After Condition Broken.

Legal title, ownership and possession. 137: 893.  
 Rights of mortgagor. 137: 894.  
 Remedies in general. 137: 898.  
 Trover. 137: 899.  
 Replevin. 137: 902.  
 Detinue. 137: 903.  
 Trespass and case. 137: 903.

### § 11. Foreclosure.

Persons disqualified from purchasing at judicial, execution or other forced sales. 136: 790-818.  
 Bar of debt secured by statute of limitations does not affect right to enforce the mortgage. 95: 669.

### § 12. Remedies of Mortgagor on Wrongful Sale.

Requisites of valid sale on default. 16: 499.  
 Collusion between mortgagee and third person. 16: 499.  
 Effect of purchase by mortgagee. 16: 500.  
 Unfair sale at inadequate price. 16: 501.  
 Accounting to mortgagor for excess. 16: 501.  
 Sale en masse where there are several pieces of property. 16: 502.

### § 13. Mortgagee's Right of Action Against Third Persons.

Nature of invasion of mortgagee's rights. 109: 431.  
 Right to waive tort and sue in assumpsit. 109: 432.  
 Replevin. 109: 433.  
 Trover, trespass or assumpsit. 109: 433.  
 Intervention. 109: 434.  
 Injunctive relief. 109: 434.  
 Damages for condemnation or injury by dam. 109: 437.  
 Effect of insolvency of mortgagor. 109: 438.  
 Effect of property remaining with mortgagor sufficient to pay mortgage debt. 109: 438.  
 Effect of consent to sale by mortgagor. 109: 438.  
 Necessity that mortgagee be entitled to possession. 109: 440.

— Trover and conversion. 109: 440.

— Replevin. 109: 441.

Effect of laches in assuming possession after default. 109: 443.

Effect of penal statute declaring sale by mortgagor a felony. 109: 443.

Effect of statute providing but one action for mortgage debt. 109: 444.

Effect of mingling mortgaged property with other property and selling the whole mass. 109: 444.

Where purchaser of mortgaged property merely exercises dominion subject to mortgage. 109: 444.

Action for fixtures, crops and timber. 109: 445, 446.

Increase of animals. 109: 449.

Recovery of mortgaged property or damages against levying officers, purchaser at judicial sale, consignee, factor, warehouseman, auctioneer, tax collectors or receivers. 109: 453.

Following proceeds of mortgaged property. 109: 453.

Rights on removal of mortgaged property to another state. 109: 454.

### CHATTELS.

Cotenancy in. See Tenancy in Common, § 8.

### CHAUFFEURS.

Law of the automobile. See Highways, § 10.

### CHEATING.

See False Pretenses; Fraud.

As subject of criminal legislation. See Criminal Law, § 1.

### CHECKS.

Bank checks. See Banks and Banking, § 3.

Certified checks. See Banks and Banking, § 5.

Fixing liability of indorser or drawer of check. See Bills and Notes, § 16.

Effect of acceptance of check as payment in full. See Payment, § 2.

### CHEMISTS.

See Druggists.

### CHICKENS.

See Animals.

### CHIEF ENGINEER.

As vice-principal. See Master and Servant, § 19.



**CHILDREN.**

See Guardian and Ward; Infants; Parent and Child.

Children traveling with parents as passengers. See Carriers, § 38.

Competency of children as witnesses. See Witnesses, § 4.

**CHILD WITNESS.**

Competency of. See Witnesses, § 4.

**CHILLING COMPETITION.**

At auction sale. See Auctions and Auctioneers, § 6.

**CHIMNEYS.**

Right to maintain dangerous chimneys which threaten injury to adjoining land. See Adjoining Land Owners, § 2.

**CHIPS.**

As gambling devices. See Gaming, § 4.

**CHIVALRY GUARDIANS.**

Who are. See Guardian and Ward, § 2.

**CHOICE OF REMEDIES.**

See Election of Remedies.

**CHOSES IN ACTION.**

Place of taxation. See Taxation, § 13.

**CHRISTIAN NAMES.**

Abbreviations of. See Names, § 3.

**CHRISTIAN SCIENCE.**

Degree of skill and care required of practitioners. See Physicians and Surgeons, § 1.  
As practice of medicine. See Physicians and Surgeons, § 4.

**CHUCKALUCK.**

As gambling device. See Gaming, § 5.

**CHURCHES.**

Liability for debts and power of courts in church controversies. See Religious Societies, §§ 1, 2.

Right to use church for school. See Schools and School Districts, § 4.

**CIGARETTES.**

As necessities of life within meaning of anti-trust laws. See Monopolies, § 1.

**CIRCUMSTANTIAL EVIDENCE.**

In criminal cases. See Criminal Law, § 38.

Instructions on. See Criminal Law, § 51.

Admissibility and sufficiency in civil actions. See Evidence, § 33.

**CIRCUS TRAINS.**

Liability of carrier hauling. See Carriers, § 43.

Liability of railroads for injuries or losses arising from hauling. See Railroads, § 12.

**CITATION.**

See Process and references under writs and specific titles.

**CITIES.**

See Municipal Corporations.

**CITIZENS.**

Jurisdiction over absent or nonresident citizens. See Absentees, § 1.

**CITIZENSHIP.**

What is. See Domicile, § 1.

**CITY CLERK.**

Liability of sureties of. See Municipal Corporations, § 11.

**CITY COUNCIL.**

Record of meetings of. See Municipal Corporations, § 7.

**CIVIL ACTIONS.**

Right to sue in one state for cause arising under statute of another. See Action, § 1.

**CIVIL DEATH.**

§ 1. General Note.

Causes of forfeiture at common law. 6: 379, 380.

Extent to which the doctrine is recognized in the United States. 6: 380-383.

**CIVIL RIGHTS.**

Right of privacy. See Constitutional Law, § 14.

Right to attend theater or show. See Theaters and Shows, § 1.

Right to keep and bear arms. See Weapons, § 1.

§ 1. Civil Rights of Negroes.

Segregation of negroes in theaters. 110: 535.

Refusal to admit negro to theater. 110: 535, 536.

Exclusion of negro from rink. 110: 535.

Exclusion of negro from billiard-room. 110: 536.

Exclusion of persons from racetrack. 110: 536.

**CIVIL SERVICE LAWS.**

Validity of. See Municipal Corporations, § 9.

**CLAIM AND DELIVERY.**

Action of. See Replevin, §§ 1-3.

**CLAIMANTS.**

Right to appeal. See Appeal and Error, § 2.

**CLAIM OF TITLE.**

Distinguished from color of title. See Adverse Possession, § 8.

**CLAIMS.**

Subject to accord and satisfaction. See Accord and Satisfaction, § 5.

Against counties. See Counties, § 5.

Against estates of decedents. See Executors and Administrators, § 18.

Mining claims. See Mines and Minerals.

Effect of allowance or rejection of claims against cities. See Municipal Corporations, § 38.

**CLAIRVOYANTS.**

Degree of care and skill required of, when practicing healing. See Physicians and Surgeons, § 1.

Clairvoyance as practice of medicine. See Physicians and Surgeons, § 4.

**CLASS.**

Libel or slander of a class or number of persons. See Libel and Slander, § 9.

Application of rule against perpetuities to gifts to a class. See Perpetuities, § 2.

Persons entitled to gifts to a class. See Wills, § 33.

**CLASS LEGISLATION.**

Constitutional inhibition of. See Constitutional Law, §§ 19-23.

**CLERICAL ERRORS.**

In certificate of acknowledgment. See Acknowledgment, § 4.

**CLERKS OF COURT.**

Filing papers with. See Courts, § 8.

**§ 1. Liability to Individuals for Non-performance of Official Duty.**

Injury and loss. 95: 89.

Failure to enter or mistake in entering judgment. 95: 89.

Failure to enter execution or mistake therein. 95: 90.

Loss on appeal or of right of appeal. 95: 91.

Taking illegal fees. 95: 91.

Refusal to pay out money. 95: 92.

Approving bonds. 95: 93.

Indexing documents. 95: 96.

Defenses. 95: 94, 95.

**§ 2. Liability of Sureties on Official Bonds.**

Issuance of writs. 91: 562.

Issuance of letters of guardianship. 91: 562.

Issuance of marriage licenses. 91: 563.

Ministerial duties. 91: 563.

Approval of bonds. 91: 564.

Collections. 91: 565.

Misappropriation of funds. 91: 566.

Acts as ex officio license or tax collector. 91: 569.

Acts as ex officio recorder. 91: 569.

**CLIENTS.**

Extent of client's control over case. See Attorney and Client, § 9.

**CLOSED SEASON.**

Validity of statute prohibiting importation of game during closed season. See Game, § 1.

**CLOTHES.**

Exempt from execution. See Exemptions, § 4.

**CLOUD ON TITLE.**

What constitutes and actions to remove. See Quieting Title, § 1.

**CLUBS.**

Equity jurisdiction over. See Associations, § 4.

Distribution of liquor by social clubs as violation of liquor laws. See Intoxicating Liquors, § 1.

**§ 1. Distribution of Liquor by Social Clubs.**

As violation of liquor laws. 24: 35-50.

**COAL.**

As a necessary of life. See Monopolies, § 1.

Mining. See Mines and Minerals.

**COAL-HOLES.**

In sidewalks. See Municipal Corporations, § 22.

**COCKFIGHTS.**

As gambling games. See Gaming, § 4.

**CODE AMENDMENTS.**

Constitutionality of. See Statutes, § 3.

**CODE PLEADING.**

See Pleading, §§ 1-4.

## CODICIL.

Construing will with codicil. See Wills, § 18.  
 Republication of revoked will by codicil.  
 See Wills, § 21.

## COERCING VERDICT.

By threatening jury. See Criminal Law, § 49.  
 In civil cases. See Trial, § 6.

## COERCION.

Boycott by. See Conspiracy, § 2.  
 Admissibility of confession of accused obtained by. See Criminal Law, § 29.  
 Justifying homicide. See Homicide, § 5.  
 Of wife as defense to commission of crime.  
 See Husband and Wife, § 22.

## COEXECUTORS AND COADMINISTRATORS.

Authority of. See Executors and Administrators, § 8.

## COHABITATION.

What constitutes. See Adultery, § 1.  
 As element of bigamy. See Bigamy, § 1.  
 Marriage by. See Marriage, § 3.

## COLD STORAGE.

General note. See Warehousemen, § 3.  
 "Freezer" and "cold storage plant" distinguished and duties of both in storing perishables stated.  
 136: 234.

## COLLATERAL ATTACK.

On adoption. See Adoption, § 1.  
 On corporate existence. See Corporations, § 1.  
 On administration. See Executors and Administrators, § 6.  
 Upon judgment. See Judgment, § 25.  
 Conclusiveness of judgment on collateral attack. See Judgment, § 30.

## COLLATERAL FACTS.

Evidence of collateral facts to impeach witness. See Witnesses, § 14.

## COLLATERAL INHERITANCE TAX.

See Taxation, §§ 21-27.

## COLLATERAL SECURITIES.

See Pledges, § 2.  
 Pledge of corporate stock. See Corporations, §§ 25, 26.

## COLLECTIONS.

By banks. See Banks and Banking, §§ 17-20.  
 Guaranty of. See Guaranty, § 7.  
 Of local improvement taxes. See Municipal Corporations, § 17.

## COLLECTORS.

Liability of sureties on bond of tax collectors. See Taxation, § 14.

## COLLISION.

Injuries to passengers on street-cars from. See Carriers, § 41.  
 Care required to avoid collision on public highway. See Highways, § 9.  
 Obstruction of navigation. See Navigable Waters, §§ 10, 11.

### § 1. Care Required to Avoid.

In general. 121: 40.  
 Fault of one vessel does not relieve the other from the consequence of negligence. 121: 41.  
 Speed of steamers. 121: 42.  
 Lookout forward. 121: 43.  
 Lookout astern. 121: 46.  
 Vessel moving in fog. 121: 46.  
 Stopping when danger is imminent. 121: 47.  
 Sail vessel must keep course. 121: 48.  
 Steamer must avoid sailing vessel. 121: 48.  
 Overtaking vessel must avoid overtaken one. 121: 49.  
 Lights must be exhibited. 121: 50.  
 Moving vessel must avoid anchored one. 121: 50.  
 Vessel at anchor. 121: 51.  
 Vessel entering harbor. 121: 51.  
 Vessel passing through narrow channel. 121: 52.  
 Vessel approaching bridge. 121: 52.  
 Vessel leaving slip. 121: 52.  
 Answering signals. 121: 52.

### § 2. Duty of Large Vessels to Avoid Imperiling Small Boats by Swells.

In general. 121: 53.  
 Rowboats. 121: 58.

## COLLUSION.

Precluding divorce. See Divorce, § 8.

## COLORS LABELS.

As trademarks. See Trademarks and Trade Names, § 2.

## COLORS PERSONS.

See Negroes.

## COLOR OF OFFICE.

Demanding or taking illegal fees under color of office. See Extortion, § 3.

**COLOR OF TITLE.**

As necessary foundation for adverse possession. See Adverse Possession, §§ 8, 9.

**COMBINATIONS.**

To do an unlawful act. See Conspiracy.  
Sanctioned by law. See Monopolies.  
Partially sanctioned by law. See Trade Unions.  
Presumably beneficial. See Religious Societies.  
Of letters and numerals as trademark. See Trademarks and Trade Names, § 2.

**COMBUSTIBLES.**

Liability of persons keeping or using. See Explosives, § 1.

**COMITATUS.**

Posse comitatus. See Sheriffs and Constables, § 7.

**COMITY.**

Delivery of fugitive from justice through comity. See Extradition.

**COMMENCEMENT.**

See specific titles and Time.  
Of jeopardy. See Criminal Law, § 16.

**COMMERCE.**

Validity of statute prohibiting importation of wild game during closed season. See Game, § 1.  
Place of taxation of property employed in interstate commerce. See Taxation, § 13.

**§ 1. State Regulation of Interstate Commerce.**

Constitutional provisions. 27: 547.  
Concurrent authority of Congress and states. 27: 547.

What is commerce. 27: 551.  
When interstate character begins. 27: 552.

Termination of interstate character. 27: 552.

Original packages. 27: 553.  
Regulation of navigation. 27: 554.  
Tolls for use of river improvements. 27: 555.

Wharfage fees. 27: 555.  
Ferry licenses. 27: 555.  
Tonnage charges. 27: 556.  
Pilots and their charges. 27: 557.  
Discrimination in favor of state products. 27: 557.

Restrictions on transportation. 27: 558.

Regulation of carriers. 27: 558.  
Regulation of telegraph companies. 27: 559.

Taxation of subjects of commerce. 27: 559.

Taxation of instrumentalities of commerce. 27: 560.

Licenses which state may exact. 27: 561.

Licenses discriminating in favor of state products. 27: 563.

License fee exacted of interstate commerce. 27: 563.

Corporations. 27: 564.

Police power and interstate commerce. 27: 564.

Health and quarantine regulations. 27: 566, 567.

Regulation of carriers. 27: 567.

Prohibiting manufacture and sale of liquor. 27: 568.

Commerce within the state. 27: 568.

State regulation of foreign made oleomargarine. 85: 402.

**COMMERCIAL AGENCIES.**

See Mercantile Agencies.

**COMMERCIAL PAPER.**

See Bills and Notes.

**COMMERCIAL TRAVELERS.**

Exemptions of. See Exemptions, § 3.

**COMMINGLED GOODS.**

Rights of owners. See Confusion of Goods, § 1.

**COMMISSION.**

State corporation commission of Oklahoma. See Corporations, § 7.

When broker's commissions are earned. See Brokers, § 3.

**COMMISSIONERS.**

Sales by. See Equity, § 9.

Regulation of railroads by. See Railroads, § 1.

**COMMISSION MERCHANTS.**

Title to consigned goods. See Factors, § 2.

**COMMON CARRIERS.**

Distinguished from private carriers. See Carriers, § 1.

Express companies as. See Carriers, § 5.

Livestock carriers as. See Carriers, § 29.

Street railroads as. See Carriers, § 41.

**COMMON COUNTS.**

See Assumpsit.

**COMMON DISASTER.**

Presumption of survivorship where persons perish in common disaster. See Death, § 2.

**COMMON LAW.**

Property in dogs at common law. See Animals, § 2.  
 Common-law powers of executors and administrators. See Executors and Administrators, § 7.  
 Guardianship at common law. See Guardian and Ward, §§ 1-12.

**COMMON-LAW LIENS.**

See Liens, § 1.

**COMMON-LAW MARRIAGE.**

Requisites and validity. See Marriage, § 3.

**COMMON SOURCE.**

Estoppel of persons claiming under common source of title. See Estoppel, § 3.  
 Suit to quiet title against persons claiming under. See Quieting Title, § 2.

**COMMON STOCK.**

Preference of preferred stock over. See Corporations, § 19.

**COMMUNICATING DISEASE.**

See Contagious Disease.  
 Civil and criminal liability for. See Health, § 1.

**COMMUNITY OF INTEREST.**

In property or profits essential to partnership. See Partnership, § 6.

**COMMUNITY PROPERTY.**

What is. See Husband and Wife, § 26.  
 Law governing. See Husband and Wife, § 27.  
 Land granted by government. See Husband and Wife, § 28.

**COMPANIES.**

See Associations; Corporations; Partnership.

**COMPARATIVE NEGLIGENCE.**

See Negligence, § 16.

**COMPELLING TESTIMONY.**

Privileged communications protected from compulsory disclosure on the witness-stand. See Witnesses, §§ 6-9.  
 Compelling accused to testify against himself, perform acts, exhibit himself or submit to physical examination. See Witnesses, §§ 12, 13.

**COMPENSATION.**

Of attorneys and lien therefor. See Attorney and Client, §§ 13-15.  
 Of auctioneer. See Auctions and Auctioneers, § 5.  
 Of brokers. See Brokers, § 3.  
 Of corporate officers. See Corporations, § 37.  
 Of public officers. See Officers, § 10.

**COMPETENCY.**

See Insane Persons.  
 Of witnesses to will. See Wills, § 6.  
 Of witnesses in civil or criminal trials. See Witnesses.

**COMPETITION.**

Contracts and combinations unreasonably restraining. See Monopolies, § 1.

**COMPLETE PERFORMANCE.**

When necessary. See Contracts, § 19.

**COMPLETE RELIEF.**

Exceptions to rule that equity will administer. See Equity, § 3.

**COMPLIANCE WITH STATUTE.**

In certificate of acknowledgment. See Acknowledgment, § 4.

**COMPOSITION WITH CREDITORS.**

Distinguished from accord and satisfaction. See Accord and Satisfaction, § 2.

**COMPOUND INTEREST.**

As usury. See Usury, § 1.

**COMPROMISE AND SETTLEMENT.**

Discharge of debt or obligation for injury by offer and acceptance of something different from what might be legally claimed. See Accord and Satisfaction.  
 Distinguished from accord and satisfaction. See Accord and Satisfaction, § 2.  
 Compromises by attorneys and contracts not to compromise. See Attorney and Client, § 5.  
 Implied authority of attorney to compromise. See Attorney and Client, §§ 8, 9.  
 Power of guardian to compromise. See Guardian and Ward, § 6.  
 By infant. See Infants, § 1.

**COMPULSORY PARTITION.**

Effect of. See Partition, § 6.

**COMPULSORY VACCINATION.**

See Schools and School Districts, § 2.  
 Validity of compulsory vaccination law. See Health, §§ 1, 4.

**COMPUTATION OF TIME.**

See Time, § 1.

**CONCEALED WEAPONS.**

Right to carry. See Weapons, § 1.

**CONCEALING CRIME.**

Person concealing crime as accomplice. See Criminal Law, § 12.

**CONCEALMENT.**

See False Pretenses; Fraud.

**CONCLUSIVENESS.**

Of certificate of acknowledgment. See Acknowledgment, § 5.

Of award of arbitrators. See Arbitration and Award, § 3.

Of judgment. See Judgment, §§ 30–43.

Of mineral patent. See Mines and Minerals, § 5.

Of return of summons. See Process, § 3.

Of tax deeds. See Taxation, § 20.

**CONCURRENT JURISDICTION.**

See Courts, § 5.

**CONCURRENT NEGLIGENCE.**

See Negligence, § 15.

**CONCURRENT REMEDIES.**

Right to pursue more than one remedy on same obligation. See Election of Remedies, § 1.

**CONDITIONAL DELIVERY.**

Of insurance policy. See Insurance, § 9.

**CONDITIONAL GUARANTY.**

What constitutes. See Guaranty, § 2.

**CONDITIONAL PARDON.**

See Pardon, § 1.

**CONDITIONAL SALE.**

As equitable mortgage. See Mortgages, § 3.

What constitutes and rights and remedies of parties. See Sales, §§ 18–22.

**CONDITIONS.**

Against assignment of assignable contract. See Assignment, § 1.

In railroad tickets. See Carriers, § 35.

Conditions subsequent in contracts. See Contracts, § 4.

In deeds. See Deeds, §§ 17–22.

In escrows. See Escrows, § 3.

In insurance policies. See Insurance, § 10.

In wills. See Wills, §§ 40–43.

**CONDITIONS PRECEDENT.**

To recovery of possession on default of purchaser of land. See Vendor and Purchaser, § 8.

To right to contest will. See Wills, § 22.

**CONDONATION.**

Loss of perfected right to divorce by. See Divorce, § 6.

**CONDUCT OF COUNSEL.**

In argument. See Criminal Law, § 47.

Constituting ground for new trial. See New Trial, § 1.

**CONDUCT OF JURY.**

In criminal cases. See Criminal Law, § 54.

**CONDUCTORS.**

Train conductors as vice-principals. See Master and Servant, § 19.

**CONDUITS.**

Water conduits as additional servitudes. See Waters and Watercourses, § 12.

**CONFESSION OF JUDGMENT.**

Construction of warrant for. See Judgment, § 6.

**CONFESSIONS.**

Of accused. See Criminal Law, §§ 29, 30.

Of third persons. See Criminal Law, § 31.

**CONFIDENCE GAMES.**

See False Pretenses, § 2.

**CONFIDENCE MEN.**

As vagrants. See Vagrancy, § 2.

**CONFIRMATION.**

Of judicial sale. See Judicial Sales, § 5.

**CONFLICTING JURISDICTION.**

See Courts, § 5.

**CONFLICTING SURVEYS.**

Effect of. See Boundaries, § 4.

**CONFLICT OF LAWS.**

Governing demand, protest and notice of foreign bill of exchange. See Bills and Notes, § 17.

Governing carrier's right to limit liability. See Carriers, § 19.

Governing performance of contract. See Contracts, § 18.

Governing damages. See Damages, §§ 1–3.

Governing rights of married women. See Husband and Wife, §§ 5, 10, 17, 18, 24.

Governing community property. See Husband and Wife, § 27.

Governing nonforfeiture of life policy. See Insurance, § 26.

Governing perpetuities. See Perpetuities, § 1.

Governing usury. See Usury, § 1.

**CONFRONTING WITNESS.**

Right of accused to confront witness. See Constitutional Law, § 13.

## CONFUSION OF GOODS.

NATURE, SCOPE AND EFFECT OF DOCTRINE, § 1.  
 GOODS CONFUSED, § 2.  
 PERSONS INVOLVED OR AFFECTED, § 3.  
 REMEDIES OF PARTIES, § 4.  
 Following trust funds confused with others.  
 See Trusts, § 15.

### § 1. Nature, Scope and Effect of Doctrine.

In general. 101: 913.  
 Wrongful intermixture. 101: 915.  
 Innocent commingling. 101: 915.  
 Goods susceptible of identification.  
 101: 915.  
 Property of equal or uniform value.  
 101: 916.  
 Property the value of which can be estimated. 101: 916.  
 Property commingled by consent. 101: 917.  
 Intermingling by inevitable accident or vis major. 101: 917.

### § 2. Goods Confused.

Grain or flour. 101: 917.  
 Cattle, horses and fowls. 101: 918.  
 Logs and lumber. 101: 919.  
 Ore and mineral. 101: 920.  
 Oil or gas. 101: 920.

### § 3. Persons Involved or Affected.

Third persons. 101: 920.  
 Purchasers. 101: 921.  
 — Where sale is in fraud of creditors.  
 101: 921.  
 Debtor and creditor. 101: 922.  
 Mortgagor and mortgagee of chattels.  
 101: 922.  
 Purchaser of mortgaged goods. 101: 923.  
 Bailor and bailee. 101: 924.  
 Husband and wife. 101: 924.

### § 4. Remedies of Parties.

Demand necessary to fix liability. 101: 925.  
 Measure of damages. 101: 925.  
 Replevin of entire mass. 101: 924.

## CONGRESS.

Power to regulate commerce. See Commerce, § 1.

## CONGRESSMEN.

Exemption from civil process. See Process, § 4.

Index-Digest—5

## CONNECTING CARRIERS.

Liability of initial freight carrier for negligence of connecting carrier. See Carriers, § 15.  
 Burden of proof as to which carrier is liable. See Carriers, § 16.  
 Of livestock. See Carriers, § 29.  
 Of passengers. See Carriers, § 46.  
 Liability of initial carrier for negligent injury to passenger by connecting carrier. See Carriers, § 46.  
 Of baggage. See Carriers, § 62.

## CONNIVANCE.

Precluding divorce. See Divorce, § 8.

## CONSCIENTIOUS SCRUPLES.

Rejection of juror for. See Jury, § 5.

## CONSENT.

To crime by injured person as defense. See Criminal Law, § 7.  
 Judgment by consent against married woman. See Judgment, § 7.  
 Essential to valid marriage. See Marriage, § 3.

## CONSERVATION.

Penalties for cutting, injuring or removing timber from forests. See Woods and Forests, § 1.

## CONSIDERATION.

For accord and satisfaction. See Accord and Satisfaction, § 3.  
 For promise to pay debt discharged by bankruptcy. See Bankruptcy, § 2.  
 For commercial paper. See Bills and Notes, § 23.  
 For contract limiting carrier's liability. See Carriers, § 25.  
 For contract. See Contracts, §§ 1, 6½.  
 Failure of consideration. See Contracts, § 13.  
 For deed. See Deeds, § 10.  
 For guaranty. See Guaranty, §§ 1, 4.  
 For partnership agreement. See Partnership, § 2.  
 For release. See Release, § 1.  
 For option to purchase land. See Vendor and Purchaser, § 3.

## CONSIGNMENTS.

To factors. See Factors, § 2.  
 Distinguished from conditional sale. See Sales, § 20.

## CONSOLIDATION.

Of corporations. See Corporations, §§ 60-66.

## CONSPIRACY.

NATURE AND ELEMENTS OF CRIME, § 1.  
 BOYCOTT, § 2.  
 LIABILITY OF CORPORATION, § 3.  
 INDICTMENT, § 4.  
 EVIDENCE, § 5.  
 TRIAL AND JUDGMENT, § 6.

**§ 1. Nature and Elements of Crime.**

In general. 3: 475.  
 Indictable conspiracy defined. 3: 475.  
 Concurrence of several members. 3: 475.  
 Influence on society determines criminal nature. 3: 475.  
 Prior agreement. 3: 475.  
 Actual agreement not required. 3: 476.  
 Must be more than one party. 3: 476.  
 Necessity for active participation. 3: 476.  
 Guilt of persons not in at inception. 3: 476.  
 Effect of addition of new parties. 3: 477.  
 Constructive presence. 3: 477.  
 Means used must be capable of effecting design. 3: 477.  
 Specific malice and constructive guilt. 3: 477.  
 Well-defined purpose not necessary. 3: 479.  
 Knowledge by member of part to be done by him. 3: 479.  
 Previous acquaintance. 3: 480.  
 Meeting together. 3: 480.  
 Particular means to be employed. 3: 480.  
 Manner of execution immaterial. 3: 480.  
 Identity of persons executing the design need not be shown. 3: 480.  
 Merger of offenses. 3: 491.  
 Defenses. 3: 491.

**§ 2. Boycott.**

Unsettled state of the law of boycott. 103: 488.  
 Origin of the word. 103: 489.  
 Definition. 103: 489.  
 Individual action. 103: 489.  
 Collective and organized action. 103: 490.  
 — By employees. 103: 491.  
 — By employers. 103: 494.  
 — By tradesmen and others. 103: 494.  
 Necessity for force, coercion and intimidation. 103: 495.  
 Manner and form of coercion. 103: 495.  
 — Threat of withdrawal of patronage. 103: 496.  
 — Imposition of fine. 103: 496.  
 — Picketing and patrolling. 103: 496.

— Distribution of literature. 103: 498.

Motive and justification. 103: 499.

Interference with prospective customers. 103: 502.

Redress of wrongs—Persons entitled to relief. 103: 502.

— Injunction. 103: 502.

— Compensatory relief. 103: 503.

Criminal liability. 103: 503.

**§ 3. Liability of Corporation.**

Criminal responsibility of corporation. 133: 779.

**§ 4. Indictment.**

General averments. 3: 480.

Overt acts. 3: 480.

Aider of imperfect averments. 3: 481.

Means by which design is to be accomplished. 3: 481.

Agreement or combination. 3: 482.

Where act is consummated. 3: 482.

Laying indictment against one conspirator. 3: 482.

Venue of offense. 3: 482.

**§ 5. Evidence.**

Direct proof unnecessary. 3: 482.

Presumptions. 3: 483.

Overt act need not be proved. 3: 483.

Object of conspiracy must be proved as laid. 3: 483.

Time when conspiracy was formed. 3: 484.

Similar offenses. 3: 484.

Letters and telegrams. 3: 484.

Speeches. 3: 485.

Personal ads in newspapers. 3: 485.

Inscriptions and devices on flags and banners. 3: 485.

Printed placards, handbills and publications. 3: 485.

Meetings and proceedings thereat. 3: 485.

Acts and declarations of conspirators. 3: 486.

— Necessity for corroboration. 3: 488.

— In favor of accused. 3: 488.

— Illustrations. 3: 488.

Proof of conspiracy prerequisite to admissibility of other evidence. 3: 489.

— Sufficiency of evidence of conspiracy. 3: 490.



**§ 6. Trial and Judgment.**

Separate trials. 3: 491.

Instructions. 3: 490.

Defenses. 3: 491.

Acquittal of one as acquittal of all. 3: 492.

Judgment. 3: 491.

**CONSTABLES.**

See Sheriffs and Constables.

**CONSTANT EMPLOYMENT.**

Validity of contract for. See Master and Servant, § 2.

**CONSTITUENT CORPORATIONS.**

Statutes after consolidation. See Corporations, § 62.

Transmission of liabilities to consolidation. See Corporations, § 65.

Rights of stockholders after consolidation. See Corporations, § 66.

**CONSTITUTIONAL LAW.**

AMENDMENTS OF CONSTITUTION, § 1.

RESPECTIVE RIGHTS OF LEGISLATIVE AND EXECUTIVE TO APPOINT TO OFFICE, § 2.

JUDICIAL INVESTIGATION OF LEGISLATIVE APPORTIONMENTS, § 3.

POLICE POWER, § 4.

— OVER DOGS, § 5.

— REGULATION OF OLEOMARGARINE, § 6.

— TO REGULATE OR PROHIBIT SALE OR MANUFACTURE OF GOODS, § 7.

— CONSTITUTIONALITY OF LOCAL OPTION LAWS, § 8.

— BUILDING REGULATIONS, § 9.

— REGULATION OF WAGES, § 10.

— STATE REGULATION OF CHARGES OF PERSONS ENGAGED IN PUBLIC ENTERPRISES, § 11.

PERSONAL LIBERTY, § 12.

RIGHT OF ACCUSED TO CONFRONT WITNESS, § 13.

EXISTENCE AND ENFORCEMENT OF RIGHT OF PRIVACY, § 14.

IMPAIRING OBLIGATION OF CONTRACTS, § 15.

— EFFECT OF MAKING EXISTING CONTRACTS ILLEGAL, § 16.

VALIDITY OF STATUTE AFFECTING VESTED MARITAL RIGHTS, § 17.

EX POST FACTO LAWS, § 18.

PRIVILEGES OR IMMUNITIES AND CLASS LEGISLATION, § 19.

— WHICH CONSTITUTES DISCRIMINATION, § 20.

— FOURTEENTH AMENDMENT CONSIDERED WITH REFERENCE TO SPECIAL PRIVILEGES, BURDENS OR RESTRICTIONS, § 21.

— PROTECTION OF CORPORATIONS FROM SPECIAL OR HOSTILE LEGISLATION, § 22.

INHIBITION OF LOCAL OR SPECIAL LAWS WHERE A GENERAL LAW CAN BE MADE APPLICABLE, § 23.

WHAT CONSTITUTES DUE PROCESS OF LAW, § 24.

Validity of quarantine laws. See Animals, § 8.

Imprisonment for debt. See Arrest, § 3.

Police power to regulate sale and use of passenger tickets. See Carriers, § 37.

Police power to regulate fishing. See Fish, § 2.

Police power to regulate and protect wild game. See Game, § 1.

Due process as applied to insane persons. See Insane Persons, § 7.

Uniformity and equality of license tax. See Licenses, § 4.

Test of validity of city ordinance as denying equal protection of the law. See Municipal Corporations, § 8.

Legislative control over property of cities. See Municipal Corporations, § 12.

Power of legislature to abridge right to jury trial. See Jury, § 1.

Security from unlawful search. See Searches and Seizures, § 1.

Right to keep and bear arms. See Weapons, § 1.

**§ 1. Amendments of Constitution.**

Entry of amendments in journal of legislature. 1: 21.

Effect of difference of phraseology as found in journal and in amendment. 1: 22.

**§ 2. Respective Rights of Legislative and Executive to Appoint to Office.**

Division of governmental powers. 13: 125.

Review of decisions of various states. 13: 126-146.

**§ 3. Judicial Investigation of Legislative Apportionments.**

Power and duty of courts. 35: 62-67.

Apportionment as legislative function. 35: 64.

**§ 4. Police Power.**

Police power defined. 53: 572.

To regulate sale and use of passenger tickets. 96: 828.

**§ 5. — Over Dogs.**

Power to license keeping of dogs. 67: 298.

Killing unlicensed dogs. 67: 298.

**§ 6. — Regulation of Oleomargarine.**

Domestic product. 85: 400; 1: 645.

Foreign product. 85: 402.

**§ 7. — To Regulate or Prohibit Sale or Manufacture of Goods.**

In general. 1: 644.  
Intoxicating liquors. 1: 645.  
Oleomargarine. 1: 645; 85: 400.  
Adulterated milk. 1: 649.  
Opium. 1: 649.  
Cotton in the seed. 1: 649.  
Sales near camp meetings. 1: 650.  
Sale of patented articles. 1: 650.

**§ 8. — Constitutionality of Local Option Laws.**

In general. 114: 317.  
Laws relating to schools. 114: 319.  
County division. 114: 320.  
Establishment and removal of county seat. 114: 321.  
Municipal affairs. 114: 321.  
Bond issues. 114: 323.  
Stock and fence laws. 114: 323.  
Liquor laws. 114: 324.

**§ 9. — Building Regulations.**

General power and limitations on it. 93: 405.  
Requiring permit for erection of building. 93: 406.  
Restricting location of building. 93: 407.  
Limiting height of building. 93: 408.  
Regulations tending to promote public health, safety or morals. 93: 409.  
Application of regulations to buildings previously completed. 93: 410.

**§ 10. — Regulation of Wages.**

In general. 122: 903-914.  
Time of payment. 139: 864.  
Method of payment. 139: 868.  
Manner of fixing amount. 139: 872.  
Fixing amount. 139: 873.  
Imposing penalties affecting amount of wages. 139: 874.  
Prohibiting assignment of wages. 139: 875.  
Prohibiting garnishment. 139: 876.  
Making wages preferred claims. 139: 877.

**§ 11. — State Regulation of Charges of Persons Engaged in Public Enterprises.**

Evolution and diminution of the doctrine announced in *Munn v. Illinois*. 62: 289-304.

**§ 12. Personal Liberty.**

Defined. 122: 904.  
Validity of statutes regulating the time and method of the payment of wages. 122: 903-914.

**§ 13. Right of Accused to Confront Witness.**

In general. 129: 24.  
Construction of constitutional provisions. 129: 26-29.  
Depositions. 129: 30.  
Documentary evidence. 129: 35.  
Dying declarations. 129: 37.  
Testimony given at preliminary examination, former trial or in other proceedings. 129: 40-42.  
Trial in absence of accused. 129: 43.  
Taking testimony through interpreter. 129: 45.  
Waiver of right. 129: 45-50.

**§ 14. Existence and Enforcement of Right of Privacy.**

Existence of right of privacy. 89: 844.  
Who may sue for infringement of right. 89: 849.  
Injunction. 89: 851.  
Suit for damages. 89: 852.

**§ 15. Impairing Obligation of Contract.**

By altering or repealing corporate charter. 62: 165.  
By franchise tax. 131: 878.  
Constitutionality of redemption laws. 49: 275, 277.  
Redemption law acting retroactively or extending time to redeem. 54: 808-811.

**§ 16. — Effect of Making Existing Contracts Illegal.**

General principles. 120: 468.  
Laws relating to remedy. 120: 475.  
Laws relating to exemptions. 120: 478.  
Laws relating to limitations. 120: 479.  
Laws relating to redemption. 120: 479.

**§ 17. Validity of Statute Affecting Vested Marital Rights.**

Vested property rights. 84: 437.  
Husband's estate in wife's lands. 84: 439.

Husband's estate in wife's personalty. 84: 440.  
 Estates by entireties. 84: 442.  
 Statutes affecting separate property. 84: 442.  
 Estates by the curtesy. 84: 444.  
 Dower rights. 84: 446.  
 Statutes impairing marital obligation. 84: 449.  
 Statutes changing rights by descent. 84: 449.

**§ 18. Ex Post Facto Laws.**

Defined. 37: 582.  
 Civil rights and proceedings. 37: 584.  
 Acts innocent when done. 37: 584.  
 Amendatory statutes. 37: 585.  
 Revival of repealed statutes. 37: 586.  
 Removing defense of statute of limitations. 37: 586.  
 Aggravating crime or changing penalty. 37: 587.  
 Second offenses. 37: 589.  
 Punishment defined. 37: 590.  
 Changing rules of evidence. 37: 594.  
 Changing rules of procedure. 37: 594.

**§ 19. Privileges or Immunities and Class Legislation.**

Discrimination in favor of veterans for public office as class legislation. 82: 529.  
 Discrimination in favor of soldiers. 117: 891-898.

**§ 20. What Constitutes Discrimination.**

License fees and occupation taxes. 48: 236.  
 Prohibition of sale of certain goods by peddlers. 48: 236.

**§ 21. Fourteenth Amendment Considered With Relation to Special Privileges, Burdens and Restrictions.**

First section of fourteenth amendment set forth. 25: 870.  
 Original purpose of the amendment. 25: 871.  
 Privileges and immunities of citizens. 25: 872.  
 Who are protected by the amendment. 25: 872.  
 — Corporations. 25: 873.  
 Retrospective effect. 25: 874.  
 Burdens and restrictions founded on race. 25: 875.

Liberty of each person and right to acquire and hold property. 25: 876.

General scope of the amendment. 25: 876.

Special privileges and rules of law. 25: 877.

Jurors—Considering race or color in selecting. 25: 878.

Restrictions on pursuit of lawful business. 25: 878.

Arbitrary tests, defined. 25: 880.

Arbitrary restrictions, illustrated. 25: 880.

Liberty to contract. 25: 881. —

Police power and the fourteenth amendment. 25: 882.

Local and special legislation. 25: 883.  
 Special punishment for crimes. 25: 885.

Taxation. 25: 885.

Judicial proceedings. 25: 886.

Establishing markets and regulating modes and places of doing business. 25: 887.

Rules and regulations to prevent fraud and imposition. 25: 887.

Fixing rates to be charged for services. 25: 888.

Regulations and restrictions to promote and secure public health. 25: 889.

Regulating practice of medicine and dentistry. 25: 890.

Restricting sale of liquor. 25: 890.

**§ 22. — Protection of Corporations from Special or Hostile Legislation.**

Altering or repealing charter. 62: 165.

Rights of citizenship. 62: 166.

To what extent subject to special legislation. 62: 168.

Protection by fourteenth amendment. 62: 167.

Protection of animals straying on railroad tracks. 62: 170.

Protection of abutting owners from damages by fire from locomotive sparks. 62: 171.

Imposing liability for attorneys' fees. 62: 172.

Taxation. 62: 175.

Special statutes respecting servants of corporation. 62: 176.

— Female employees and the eight-hour law. 62: 181.

**§ 23. Inhibition of Local or Special Law Where General Law can be Made Applicable.**

Scope of constitutional provisions. 93: 106.

Constitutional provisions are not retrospective. 93: 106.

Inhibition is absolute. 93: 107.

Necessity for special law—As legislative question. 93: 107.

— As judicial question. 93: 109.

— Rule to determine validity of statute. 93: 111.

Special statutes in particular cases—When held invalid. 93: 111.

— When held valid. 93: 112.

Special laws affecting corporations and their servants. 62: 165–182.

— Eight-hour law for female employees. 62: 181.

**§ 24. What Constitutes Due Process of Law.**

Definition. 122: 904.

“Due process of law” and “law of the land” indefinable. 20: 554.

Not confined to judicial proceedings. 20: 554.

Tax proceedings. 20: 554.

Proceedings by information. 20: 555.

Disbarment proceedings. 20: 556.

Laws of general operation. 20: 556.

Laws held to violate due process. 20: 556.

Laws held not to violate due process. 20: 558.

**CONSTRUCTION.**

Of certificate of acknowledgment. See Acknowledgment, § 3.

Of appeal bonds. See Appeal and Error, § 4.

Of contract limiting freight carrier's liability. See Carriers, § 22.

Of rules of court. See Courts, § 7.

Of deeds. See Deeds, §§ 2, 7.

Of guaranty contract. See Guaranty, § 5.

Of insurance policy. See Insurance, § 10.

Of statutes. See Statutes, § 4.

Of inheritance tax laws. See Taxation, § 24.

Of wills in equity. See Wills, § 29.

Evidence to aid construction of will. See Wills, § 30.

**CONSTRUCTIVE BREAKING.**

See Burglary, §§ 1, 4.

**CONSTRUCTIVE NOTICE.**

See Notice.

**CONSTRUCTIVE SERVICE.**

Doctrine of constructive service by discharged servant repudiated. See Master and Servant, § 5.

**CONSTRUCTIVE TRUST.**

Creation by parol. See Trusts, § 3.

**CONTAGIOUS DISEASES.**

Quarantine of diseased animals and liability for spreading contagion. See Animals, §§ 7, 8.

As justification for breach of contract to marry. See Breach of Marriage Promise, § 1.

Divorce for communication of. See Divorce, § 4.

Liability for communicating to others. See Health, § 1.

Liability of physicians and surgeons for communicating. See Physicians and Surgeons, § 2.

**CONTEMPT.**

IN GENERAL, § 1.

NONPAYMENT OF ALIMONY, § 2.

NEWSPAPER PUBLICATIONS, § 3.

AUTHORITY TO PUNISH, § 4.

REMEDIES OF PERSON CONVICTED, § 5.

Imprisonment for contempt as imprisonment for debt. See Arrest, § 3.

Distinguished from disbarment of attorney. See Attorney and Client, § 1.

Review of contempt cases on certiorari. See Certiorari, § 3.

To enforce order for alimony. See Divorce, § 11.

Review of contempt proceedings on habeas corpus. See Habeas Corpus, § 3.

Regulation of proceedings by mandamus. See Mandamus, § 6.

Striking out answer for. See Pleading, § 4.

**§ 1. In General.**

Criminal contempt defined. 135: 272.

Liability of corporation to punishment for. 133: 779.

**§ 2. Nonpayment of Alimony.**

What constitutes contempt by nonpayment of alimony. 137: 881.

Notice and demand in proceedings for contempt for nonpayment of alimony. 137: 879.

Procedure to enforce payment of alimony. 137: 875, 878.

Purging contempt for nonpayment of alimony. 137: 886.

**§ 3. Newspaper Publications.**

Inherent power of courts to punish. 50: 573.

— Legislature cannot control. 50: 573.

As constructive, not direct. 50: 573.  
 Classification. 50: 574.  
 Publication tending to prevent fair trial. 50: 574.  
 Denouncing criminal prosecution. 50: 574.  
 Criticism of witnesses. 50: 574.  
 Exciting prejudice against litigant. 50: 574, 575.  
 Offering reward for production of evidence. 50: 575.  
 Accusing party or witnesses of perjury. 50: 575.  
 Need not be addressed to court or judge. 50: 575.  
 Concerning grand or petit jury. 50: 575.  
 Exposing court and its officers to contempt without attempting to pollute or otherwise affect the administration of justice. 50: 575.  
 False reports of proceedings. 50: 576.  
 Illustrations. 50: 576–579.  
 Comments on past transactions. 50: 580–584.  
 Knowledge of publisher. 50: 584.  
 Defenses. 50: 584, 585.

#### § 4. Authority to Punish.

Power is incident to judicial authority. 117: 950.  
 National courts. 117: 952.  
 Inferior courts generally. 117: 953.  
 Probate and surrogate courts. 117: 954.  
 Justices and magistrates. 117: 955.  
 Municipal courts. 117: 955.  
 Judges of courts. 117: 956.  
 Commissioners and referees. 117: 957.  
 Notaries and grand juries. 117: 958.  
 Restriction of power to courts contemned. 117: 958.  
 Not deposed by implication, granting of concurrent authority nor by making the act a crime. 117: 959.  
 Legislative control of authority. 117: 959.

#### § 5. Remedies of Person Convicted.

Appeal or writ of error. 22: 417.  
 Certiorari. 22: 420.  
 Habeas corpus. 22: 422.  
 Other remedies. 22: 425.

#### CONTESTS.

Between mine claimants and nonmineral entrymen. See Mines and Minerals, § 2.  
 Will contests. See Wills, §§ 22, 23.

#### CONTIGUOUS LANDS.

See Abutting Owners.  
 Mutual rights, duties and liabilities of owners of. See Adjoining Land Owners.

#### CONTINGENCIES.

Validity of sale of. See Sales, § 3.

#### CONTINGENT ESTATES.

Partition of. See Partition, § 2.

#### CONTINGENT FEES.

Contracts of attorneys for. See Attorney and Client, §§ 5, 6.

#### CONTINGENT LEGACIES.

Nature and essentials. See Wills, § 48.

#### CONTINGENT STATUTE.

Validity of statute made to take effect upon the happening of some future event. See Statutes, § 2.

#### CONTINUANCE.

Continuance or revival of action on death of party pending suit. See Abatement and Revival, § 4.  
 Of criminal case for absence of witness. See Criminal Law, § 42.  
 Mandamus to compel granting of continuances. See Mandamus, § 6.

#### CONTINUING GUARANTY.

What constitutes. See Guaranty, § 2.

#### CONTINUOUS NUISANCE.

Time to sue for. See Nuisance, § 8.

#### CONTINUOUS OFFENSES.

Offenses continuing throughout one day as single offense. See Criminal Law, § 3.

#### CONTINUOUS TRESPASSES.

Enjoining. See Injunction, § 4.

#### CONTRACTS.

WHEN CONSIDERATION MUST BE EXPRESSED, § 1.  
 PLACE OF THE CONTRACT, § 2.  
 REPUGNANT CLAUSES, § 3.  
 WORDS CREATING CONDITIONS SUBSEQUENT, § 4.  
 FOR BENEFIT OF THIRD PERSON, § 4½.  
 BY TELEGRAPH, § 5.  
 BY TELEPHONE, § 6.  
 MORAL OBLIGATION AS CONSIDERATION, § 6½.  
 VALIDITY—IN GENERAL, § 7.  
 — CONTROLLING PROCEDURE OR OUSTING JURISDICTION, § 8.

- TO FURNISH EVIDENCE, § 9.
- MARRIAGE BROKERAGE CONTRACTS, § 10.
- SIGNATURE IN IGNORANCE OF CONTENTS, § 11.
- INTOXICATION, § 12.
- PARTIAL ILLEGALITY OR FAILURE OF CONSIDERATION, § 13.
- CONTRACTS WHICH CANNOT BE RATIFIED, § 14.
- RIGHTS OF PARTIES TO ILLEGAL CONTRACT, § 15.
- RULE OF PARI DELICTO, § 16.
- PERFORMANCE—IMPOSSIBILITY, § 17.
- PLACE OF PERFORMANCE, § 18.
- WHEN COMPLETE PERFORMANCE IS NECESSARY, § 19.
- CERTIFICATE OF ARCHITECT OR ENGINEER, § 20.
- ACCEPTANCE OF WORK AS WAIVER OF IMPERFECT PERFORMANCE, § 21.
- SUBSTANTIAL PERFORMANCE OF BUILDING CONTRACT, § 22.
- EFFECT OF DEATH OF PROMISOR, § 23.
- RIGHTS ON BREACH—RIGHT TO EXECUTE CONTRACT, § 24.
- RESCISSION, § 25.
- ACTIONS, § 26.
- CONTRACTS MADE IN ANOTHER STATE OR COUNTRY, § 27.
- RIGHT OF THIRD PERSON TO SUE ON CONTRACT MADE FOR HIS BENEFIT, § 28.
- PLEADING AND PROOF, § 29.

Contract obligations subject to accord and satisfaction. See Accord and Satisfaction, § 5.

Accord agreements. See Accord and Satisfaction, § 1.

Relating to lateral support. See Adjoining Land Owners, § 1.

Alteration of. See Alteration of Instruments, § 1.

To submit controversy to arbitrators. See Arbitration and Award, § 1.

Rescission of agreement to arbitrate. See Arbitration and Award, § 2.

Conditions prohibiting assignment of assignable contract. See Assignment, § 1.

Between attorney and client. See Attorney and Client, §§ 5, 6.

Destroying negotiability of commercial paper. See Bills and Notes, § 7.

Boundary agreements. See Boundaries, § 2.

Breach of contract to marry—Defenses to suit for. See Breach of Marriage Promise, § 1.

Bills of lading. See Carriers, §§ 7-9.

Limiting carrier's liability for loss or injury to goods. See Carriers, §§ 18-28.

Passenger tickets. See Carriers, § 37.

Impairing obligation of contracts. See Constitutional Law, § 15.

Stock subscription contracts. See Corporations, § 12.

To control future voting of stock. See Corporations, § 32.

Between directors and corporation. See Corporations, § 42.

Ultra vires contracts of corporations. See Corporations, § 54.

Covenants relating to title, possession and use of land. See Covenants.

To procure state's evidence. See Criminal Law, § 35.

Liquidating damages. See Damages, §§ 14, 15.

Damages for breach. See Damages.

Parol or extrinsic evidence to vary. See Evidence, §§ 25-29.

Promise to pay debt of another. See Frauds, Statute of, § 2.

Not to be performed within a year. See Frauds, Statute of, § 4.

Made to hinder or defraud creditors. See Fraudulent Conveyances.

Gambling contracts. See Gaming, §§ 2, 4.

Of guaranty. See Guaranty, §§ 1-8.

Power of guardian to contract. See Guardian and Ward, § 7.

Exposure to disease as justification for breach. See Health, § 1.

Effect of marriage on antecedent contracts. See Husband and Wife, § 4.

Between married persons. See Husband and Wife, §§ 5, 6.

Of married women. See Husband and Wife, § 10.

Separation agreements between married persons. See Husband and Wife, § 29.

Indemnity contracts. See Indemnity, § 1.

Of infants. See Infants, §§ 1-4.

Enjoining breach of contract. See Injunction, § 7.

Adjudication of insanity as proof of incapacity to contract. See Insane Persons, § 2.

Of insane persons. See Insane Persons, § 4.

Insurance contracts. See Insurance, §§ 5-12.

Effect of failure to affix revenue stamp. See Internal Revenue, § 1.

Judgment as contract. See Judgment, § 1.

Leases. See Landlord and Tenant, §§ 11-20.

Not to plead the statute of limitations. See Limitation of Actions, § 14.

Actions on lost contracts. See Lost Instruments, § 1.

Inducing breach of contract of employment. See Master and Servant, § 1.

Marriage as civil contract. See Marriage, § 1.

Validity of contracts for permanent employment. See Master and Servant, § 2.

Creating monopolies. See Monopolies, § 1.

To execute mortgage as equitable mortgage. See Mortgages, § 3.

Of newspapers against public policy. See Newspapers, § 1.

Transferring parental custody of children. See Parent and Child, § 2.

Partnership agreements. See Partnership, § 2.

Against disclosure of secret process or trade secret. See Patents, § 1.

For use or sale of trade secret or secret process. See Patents, § 1.

Of agents. See Principal and Agent, §§ 14, 18.

Of suretyship. See Principal and Surety, § 2.

Reformation of. See Reformation of Instruments, §§ 1-6.

Of release. See Release, §§ 1-6.

Of sale. See Sales, § 2.

Enforcement of specific performance of contracts. See Specific Performance, § 2.

Law of the telephone. See Telegraphs and Telephones, § 9.  
 Of actors and theatrical performers. See Theaters and Shows, § 1.  
 To convey or purchase land. See Vendor and Purchaser, §§ 1-13.  
 Time as essence of contract to purchase land. See Vendor and Purchaser, § 2.  
 To devise or bequeath. See Wills, § 12.  
 As wills. See Wills, § 2.  
 Joint, mutual or reciprocal will as contract. See Wills, § 7.  
 Multi-will, as contract. See Wills, § 8.  
 Not to contest will. See Wills, § 23.

### § 1. When Consideration must be Expressed.

Contracts under seal. 60: 432.  
 Effect of statute of frauds. 60: 432.  
 English and American rules. 60: 433.  
 Sufficient expression. 60: 437.  
 Insufficient expression. 60: 440.

### § 2. Place of the Contract.

Place of final assent. 55: 44.  
 Letters and telegrams. 55: 47.  
 Guaranties. 55: 47.  
 Place of performance. 55: 48.  
 Sales of personalty. 55: 49.  
 Loan of money. 55: 50.  
 Insurance contract. 55: 51.  
 Fixing place by agreement. 55: 53.

### § 3. Repugnant Clauses.

Giving meaning to every word and clause. 60: 93.  
 Disregard of repugnant provisos. 60: 93.  
 First clause controls. 60: 93.  
 Preamble. 60: 94.  
 Repugnant recitals. 60: 94.  
 Indorsements. 60: 95.  
 Conditions. 60: 95.  
 Writing controls printing. 60: 96.  
 Printed letter-heads not considered. 60: 96.

### § 4. Words Creating Conditions Subsequent.

Definitions. 79: 747.  
 Words "upon condition" not necessary. 79: 748.  
 Necessity for express terms or clear implication. 79: 749.  
 Illustrations. 79: 765.

### § 4½. For the Benefit of a Third Person.

Right of beneficiary to enforce. 39: 531-535.

— Decisions denying the right. 39: 532.  
 Designation of benefit or beneficiary. 39: 534.  
 Rescission of contract. 39: 535.  
 Right of third person to sue on contract made for his benefit. 71: 176-197.

### § 5. By Telegraph.

Agency of telegraph company. 110: 743.  
 Right to contract by telegraph. 110: 746.  
 Sufficiency of telegram in general. 110: 746.  
 — Certainty and definiteness. 110: 748.  
 — Designation of parties. 110: 749.  
 — Mistake of telegraph company. 110: 751.  
 — Letters or other writings in connection with. 110: 754.  
 — Prior oral negotiations. 110: 755.  
 — Telegram contemplating reduction of contract to formal writing. 110: 755.  
 Acceptance must be definite and unconditional. 110: 755.  
 Acceptance must be prompt. 110: 757.  
 Acceptance of check or draft—Sufficiency. 110: 757.  
 Withdrawal of offer before acceptance. 110: 758.  
 Agent's contract based on telegram from principal. 110: 759.  
 Statute of frauds—Sufficiency of telegrams. 110: 760.  
 — Sufficiency of signature. 110: 761.  
 — Right to aid telegram by parol. 110: 761.  
 — Contracts respecting land. 110: 761.  
 Law governing telegraphic contracts. 110: 763.  
 Admissibility of telegrams in evidence. 110: 764-771.

### § 6. By Telephone.

Law of the telephone as applied to contracts. 127: 538-556.

### § 6½. Moral Obligation as Consideration.

In general. 39: 735.  
 Promise to pay after debt is released. 39: 736.

— Debt discharged by bankruptcy. 39: 737.

Promise to pay debt barred by limitations. 39: 739.

— Past act or transaction as consideration. 39: 740.

Promise by widow to pay debt contracted during coverture. 39: 742.

Review of miscellaneous instances. 39: 743-745.

### § 7. Validity—In General.

Contracts with spiritual mediums. 1: 88.

Unconscionable contracts. 81: 663-669.

Validity of lobbying contracts. 121: 726-740.

### § 8. — Controlling Procedure or Ousting Jurisdiction.

Contracts making rules of evidence. 8: 921.

Agreements to submit to arbitration. 8: 922.

Basis of the rule. 8: 922.

Application of the rule. 8: 923, 924.

### § 9. — To Furnish Evidence.

Generally invalid. 97: 145.

Effect of good faith. 97: 147.

Evidence produced by public officer. 97: 148.

Instances of contracts upheld. 97: 148.

Agreements for clemency in criminal cases. 97: 149.

Expert testimony. 97: 149.

Restoring competency of witness for purpose of suit. 97: 150.

Contracts indirectly involving testimony. 97: 150.

Promise of more than legal fee. 97: 150.

### § 10. — Marriage Brokerage Contracts.

Definition. 104: 919.

Invalidity. 104: 919.

Enforcement of contract. 104: 921.

Recovery of consideration paid. 104: 921.

### § 11. — Signature in Ignorance of Contents.

Persons guilty of negligence.

— Who can read. 138: 810.

— Who cannot read. 138: 813.

Persons not guilty of negligence. 138: 814.

### § 12. — Intoxication.

Degrees of intoxication. 107: 537.

Whether void or voidable. 107: 539.

Right to plead intoxication. 107: 540.

Intoxication procured by other party. 107: 541.

Unfair advantage. 107: 542.

Knowledge of other party. 107: 542.

Ratification. 107: 543.

Rescission and restoration. 107: 544.

### § 13. Partial Illegality or Failure of Consideration.

Effect of partial failure of consideration. 117: 495.

Distinction between illegality and partial failure. 117: 495.

Where consideration is entire and indivisible. 117: 497.

Where consideration is separable. 117: 498.

Ascertaining divisibility of consideration. 117: 501.

Where no means of apportionment are furnished by contract. 117: 501.

Where illegal portion is merely incidental. 117: 501.

Where contract may be performed legally or illegally. 117: 501.

Effect of knowledge of contemplated or past performance of contract in an illegal manner. 117: 502.

Various kinds of contracts—Violation of law or ordinance. 117: 503.

— Tending to corrupt morals. 117: 509.

— Tending to create breach of confidence or induce fraud. 117: 512.

— Tending to corrupt or influence legislators or public officers. 117: 517.

— Tending to oust jurisdiction or obstruct justice. 117: 523.

— Tending to restrain trade or competition. 117: 525.

### § 14. Contracts Which cannot be Ratified.

Void contracts. 59: 638.

Illegal or void agency. 59: 639.



Married woman's unauthorized contract. 59: 640.  
 Contracts tainted with fraud. 59: 640.  
 Forgeries. 59: 641.  
 Sunday contracts. 59: 641.

**§ 15. Rights of Parties to Illegal Contract.**

Refusal of relief to parties in pari delicto. 3: 742.  
 Exceptions to the rule. 3: 742-744.

**§ 16. — Rule of Pari Delicto.**

In general. 113: 724; 3: 742-744.  
 Where fault is not equal—Where transaction violates rule made to protect one party. 113: 727.  
 — Where undue influence is exercised. 113: 728.  
 — Relations of trust and confidence. 113: 729.  
 Collateral illegality. 113: 731.  
 — Agents. 113: 732.  
 — Partners. 113: 733.  
 — Stakeholders. 113: 734.  
 Public policy. 113: 735.

**§ 17. Performance—Impossibility.**

Effect of impossibility of performance of conditions precedent or subsequent. 70: 832.

**§ 18. — Place of Performance.**

Contracts between residents of different states. 55: 48.  
 Contracts between residents of different countries. 55: 48.  
 Mode of ascertaining. 55: 48.  
 Law of place of performance governs. 55: 48.

**§ 19. — When Complete Performance is Necessary.**

Entire contracts. 59: 277.  
 Divisible contracts. 59: 279.  
 Full performance of entire contract. 59: 281.  
 Prevention of performance of entire contract. 59: 283.  
 Building and analogous contracts. 59: 285.  
 Contracts for personal services. 59: 289.  
 Sales of personalty. 59: 291.  
 Contract for work and materials. 59: 293.  
 Illustrations. 59: 294, 295.

**§ 20. — Certificate of Architect or Engineer.**

Architect's certificate. 56: 312.  
 — Conclusiveness. 56: 314.  
 Engineer's estimate or certificate. 56: 314.

**§ 21. — Acceptance of Work as Waiver of Imperfect Performance.**

Contract to manufacture and sell personalty. 115: 256.  
 Contract to furnish machinery. 115: 257.  
 Contract to erect building or for material. 115: 262.  
 Contract to construct ditch or drain. 115: 262.  
 Contract to dig well. 115: 263.  
 Effect of knowledge of nonperformance. 115: 263.  
 Effect of necessity of using articles contracted for. 115: 263.

**§ 22. — Substantial Performance of Building Contract.**

Application of equitable principles. 134: 678.  
 The rule and the reason therefor. 134: 679.  
 Omissions, deviations or defects due to willfulness or bad faith. 134: 683.  
 Amount recoverable on substantial performance. 134: 684.  
 What constitutes substantial performance—In general. 134: 686.  
 — As dependent on character of defects or omissions. 134: 686.  
 — As dependent on cost of remedying defects. 134: 691.  
 — As dependent on time of completion of work. 134: 693.  
 Form of action for recovery on substantial performance. 134: 693.  
 Substantial performance as question of fact. 134: 695.  
 Burden of proof. 134: 695.

**§ 23. — Effect of Death of Promisor.**

General rule. 22: 811.  
 On liability for breach of contract. 22: 812.  
 Contracts of a personal nature terminate. 22: 812.

Contract to marry is extinguished. 22: 813.  
 Joint obligation terminates. 22: 814.  
 Guaranty and suretyship survive. 22: 814.  
 Offers or proposals do not survive. 22: 815.

**§ 24. Rights on Breach—Right to Execute Contract.**

Elementary principles governing. 33: 791.  
 Right to stop performance of executory contract. 33: 792.  
 Rights of party notified not to proceed with performance. 33: 794.  
 — Right to keep contract alive. 33: 796.

**§ 25. Rescission.**

Contracts for benefit of third person. 39: 535; 71: 198.  
 Effect of failure to read contract or carelessness in executing it on right to rescind for fraud. 32: 384-387.

**§ 26. Actions.**

Form of action for recovery upon substantial performance of building contract. 134: 693-696.

**§ 27. — Contracts Made in Another State or Country.**

General rule that contract valid where made is valid everywhere. 55: 774.  
 Contracts forbidden by law of forum. 55: 775.  
 Contracts which are immoral or against religion. 55: 775.  
 Stock speculations and marginal contracts. 55: 775.  
 Contracts in fraud or evasion of foreign law. 55: 776.  
 Contracts void where made. 55: 777, 778.

**§ 28. — Right of Third Person to Sue on Contract Made for His Benefit.**

In general. 39: 531-535.  
 English rule. 71: 176.  
 — In America. 71: 177.  
 American rule. 71: 182.  
 Reasons for the rule. 71: 187.  
 Elements of the rule. 71: 189.

Sufficiency of benefit. 71: 192.  
 Benefit derived from contract of surety. 71: 195.

Benefit to citizen from city contract with water company. 71: 196.  
 Benefit to addressee of telegram. 71: 196.

Naming third party in the contract. 71: 197.

Acceptance of contract by third party. 71: 197.

Contract to pay debt of third party. 71: 199.

— Mortgage debt. 71: 201.

Third party subject to equities and defenses. 71: 202.

Rule in equity. 71: 203.

Effect of relationship. 71: 203.

Contracts under seal. 71: 205.

Statutory provisions. 71: 206.

Rule in federal courts. 71: 206.

**§ 29. — Pleading and Proof.**

Denials on information and belief. 133: 111.

Burden of proving want of consideration. 135: 768.

**CONTRACTORS.**

Right to exemptions as laborers. See Exemptions, § 3.  
 As servants. See Master and Servant, § 32.  
 Right to mechanic's lien. See Mechanics' Liens, § 2.

**CONTRADICTION.**

Of witness to impeach him. See Witnesses, § 14.

**CONTRIBUTION.**

Right of life tenant to contribution on discharge of encumbrance. See Life Estates, § 1.

For use of party-wall. See Party-walls, § 1.  
 Between cosureties. See Principal and Surety, § 7.

Between part owners of vessels. See Shipping, § 2.

**§ 1. In General.**

Effect of bar of debt as to one joint debtor on right of other to contribution. 60: 208.

On discharge of encumbrance on estate held by life tenant. 137: 663.

**§ 2. Not Founded on Express Promise.**

Foundation of the right. 98: 32.  
 Common charges or encumbrances on land. 98: 34.

Principal debtors and co-contractors. 98: 35.  
 Assignment of right to contribution. 98: 38.  
 Presumptions as to liability of co-obligors. 98: 38.  
 Agreements to support third persons. 98: 38.  
 Judgment debtors. 98: 38.  
 — Statutory modifications. 98: 40.  
 — Costs of litigation. 98: 40.  
 Sureties. 98: 41.  
 Effect of discharge of one joint debtor. 98: 42.  
 Miscellaneous instances of contribution. 98: 42.  
 Statute of limitations—Accrual. 98: 43.  
 — Nature of action. 98: 44.  
 — Right to contribution for payment of barred debt. 98: 44.  
 Measure of contribution. 98: 45.  
 — Where part of debtors are insolvent. 98: 46.  
 Enforcement of right—Plaintiff must have paid more than his share. 98: 47.  
 — All must be liable for claim. 98: 48.  
 Parties. 98: 47.  
 Pleading and evidence. 98: 49.  
 Notice of satisfaction of debt and demand. 98: 50.

### CONTRIBUTORY NEGLIGENCE.

Of servant distinguished from assumption of risk. See Master and Servant, § 26.  
 Believing master from liability for injury to servant. See Master and Servant, § 27.  
 Of persons injured. See Negligence, §§ 11-13.  
 As proximate cause of injury. See Negligence, § 10.

### CONTROL.

See Custody; Regulation.

### CONVENTIONAL SUBROGATION.

See Subrogation, § 2.

### CONVERSATION.

Over telephone as evidence. See Evidence, § 10.

### CONVERSION.

As element of crime of embezzlement. See Embezzlement, § 6.  
 Wrongful conversion sufficient to sustain trover. See Trover and Conversion, § 2.

§ 1. Equitable Conversion by Will.  
 General doctrine. 5: 141.  
 Testator's intention as test. 5: 142.  
 By express words of limitation. 5: 143.

Power of sale must be imperative and absolute. 5: 143.  
 — Exceptions to the rule. 5: 144.  
 Conversion relates back to testator's death. 5: 145.  
 Total or partial failure of purposes indicated. 5: 146.  
 Election to have the property in its unconverted state. 5: 147.

### CONVICTS.

Domicile of. See Domicile, § 1.  
 Conditional pardon of. See Pardon, § 1.  
 Civil death. 137: 691; 6: 379.

### CO-OBLIGORS.

Agency between. See Principal and Agent, § 1.

### COOLING TIME.

Effect on degree of homicide. See Homicide, § 3.

### COPYING RECORDS.

Right of abstracters to examine and copy public records. See Abstracts of Title, § 2.

### CORAM NOBIS.

Writs of error coram nobis and coram vobis. See Judgment, § 12.

### CORN CRIB.

Burning, as arson. See Arson, § 2.

### CORONER'S INQUEST.

Admissibility of evidence given at. See Evidence, § 31.  
 As evidence in homicide cases. See Homicide, § 14.

### CORPORATIONS.

I. FORMATION AND REGULATION, §§ 1-7.  
 II. SEAL, BY-LAWS AND RECORDS, §§ 8-10.  
 III. CAPITAL STOCK AND DIVIDENDS, §§ 11-28.  
 IV. MEMBERS AND STOCKHOLDERS, §§ 29-36.  
 V. OFFICERS AND AGENTS, §§ 37-39.  
 VI. DIRECTORS, §§ 40-44.  
 VII. POWERS AND LIABILITIES, §§ 45-51.  
 VIII. PROPERTY, CONTRACTS AND CONVEYANCES, §§ 52-55.  
 IX. INSOLVENCY AND RECEIVERS, §§ 56-59.  
 X. CONSOLIDATION, §§ 60-66.  
 XI. DISSOLUTION AND FORFEITURE OF FRANCHISE, §§ 67-71.  
 XII. FOREIGN CORPORATIONS, §§ 72-74.  
 See, also, Associations; Banks and Banking; Beneficial Associations; Gas; Municipal Corporations; Partnership; Railroads; Religious Societies; Street Railroads; Telegraphs and Telephones; Trade Unions.

Consolidation or dissolution of corporation pending suit as ground for abatement. See Abatement and Revival, § 5.  
 Proceedings against foreign corporations doing business in state. See Absentees, § 1.  
 Certificate of acknowledgment by. See Acknowledgment, § 4.  
 Review of proceedings of corporation commission of Oklahoma. See Appeal and Error, § 1.  
 Attachment of shares of stock. See Attachment, § 3.  
 Accommodation paper made or indorsed by. See Bills and Notes, § 1.  
 Protection of corporations from special or hostile legislation. See Constitutional Law, § 22.  
 Responsibility for crime. See Criminal Law, § 11.  
 Mode of punishing corporations for crime. See Criminal Law, § 66.  
 Condemnation of property of. See Eminent Domain, § 7.  
 Judicial notice of existence, powers and acts of. See Evidence, § 1.  
 Liability for homicide. See Homicide, § 4.  
 Persons estopped or concluded by judgment against corporation. See Judgment, § 36.  
 Liability for libel or slander. See Libel and Slander, § 1.  
 License tax on. See Licenses, § 1.  
 Limitation of actions against stockholders. See Limitation of Actions, § 2.  
 Limitation of actions against subscribers to corporate stock. See Limitation of Actions, § 3.  
 Limitation of actions against corporate officers. See Limitation of Actions, § 4.  
 Mandamus to compel performance of ministerial duties. See Mandamus, §§ 4, 9.  
 Monopolistic corporations and consolidations. See Monopolies.  
 What corporations are liable for injuries from defects in streets and public places. See Municipal Corporations, § 35.  
 De facto or imperfect corporations as partnerships. See Partnership, § 2½.  
 Partnership between corporations or between individuals and corporations. See Partnership, § 3.  
 Quo warranto against. See Quo Warranto, § 1.  
 Religions. See Religious Societies.  
 Specific performance of contracts for sale of corporate stock. See Specific Performance, § 7.  
 Taxation of interstate consolidated corporations. See Taxation, § 7.  
 Taxation of franchises. See Taxation, § 8.  
 Place of taxation of corporate property of. See Taxation, § 13.  
 Place of taxation of stock and shares. See Taxation, § 13.  
 Corporate names as trade names. See Trade-marks and Trade Names, § 2.  
 Duties and liabilities of water companies. See Waters and Watercourses, § 13.

## I. FORMATION AND REGULATION.

DEFECTIVE FORMATION, § 1.  
 DE FACTO CORPORATIONS, § 2.

PERSONAL LIABILITY OF PERSONS ACTING AS CORPORATION WITHOUT AUTHORITY, § 3.  
 PROMOTERS, § 4.  
 LIABILITY FOR CONTRACTS OF PROMOTERS, § 5.  
 TRANSACTIONS OF SUPPOSED BUT NONEXISTING CORPORATIONS, § 6.  
 STATE CORPORATION COMMISSION OF OKLAHOMA, § 7.

### § 1. Defective Formation.

Acceptance of charter. 33: 176.  
 Substantial compliance with statute indispensable. 33: 177.  
 Failure of corporators to sign articles. 33: 178.  
 Omission to state corporate name. 33: 178.  
 Failure to state objects of corporation. 33: 178.  
 Failure to file articles. 33: 179.  
 Statutory ratification of defective corporation. 33: 179.  
 Collateral attack on corporation. 33: 180.  
 What are de facto corporations. 33: 181.  
 Estoppel to deny corporate existence and capacity. 33: 184.  
 Liability on subscription to stock. 33: 184.  
 Liability of stockholders for corporate debts. 33: 184, 185.  
 Actions on contracts. 33: 185, 186.

### § 2. De Facto Corporations.

Defined. 118: 253.  
 Essentials. 118: 254.  
 Necessity for law authorizing corporation. 118: 255.  
 Unconstitutional law or charter. 118: 255.  
 Impossibility of corporation de jure. 118: 256.  
 Expiration of corporation de jure. 118: 256.  
 Consolidation of corporations. 118: 256.  
 Colorable compliance with law. 118: 257.  
 Eligibility of incorporators. 118: 258.  
 Signing and acknowledgment of articles. 118: 258.  
 Residence of incorporators and place of business. 118: 258.  
 Filing articles of incorporation. 118: 259.  
 Filing certificate of incorporation. 118: 259.

Payment of fee or tax. 118: 259.  
 Subscription to stock. 118: 260.  
 User of corporate rights or powers.  
 118: 260.

**§ 3. Personal Liability of Persons Acting as Corporation Without Authority.**

Where there is a bona fide attempt to incorporate. 29: 601.

Where organization never had any validity. 29: 602.

Cases holding members liable as partners. 29: 602.

**§ 4. Promoters.**

Rights and liabilities of promoters. 17: 161-168.

**§ 5. Liability for Contracts of Promoters.**

General rule. 13: 28.

By adoption after corporate organization. 13: 29.

By acceptance of benefits of contracts. 13: 30.

**§ 6. Transactions of Supposed but Nonexisting Corporations.**

General principles which should govern. 94: 593.

When there is a corporation de facto. 94: 594.

When there is no de facto existence. 94: 595.

Doctrine of estoppel. 94: 596.

Validity and effect of conveyances. 94: 597.

**§ 7. State Corporation Commission of Oklahoma.**

Powers, duties and regulations—Carriers. 138: 1006.

— Interstate commerce. 138: 1007.

— One railroad crossing another. 138: 1008.

— Maintenance of flag station. 138: 1008.

— Changing name of station. 138: 1008.

— Stopping trains at station. 138: 1008.

— Installing telegraph service. 138: 1009.

— Telephone companies. 138: 1009.

Review of proceedings—Appeal. 138: 1009.

— Duty to make findings of fact. 138: 1009.

— Motion for new trial not necessary. 138: 1010.

— Presumption in favor of orders. 138: 1010.

— Dismissal of appeal. 138: 1010.

— Review, affirmance and reversal. 138: 1011.

**II. SEAL, BY-LAWS AND RECORDS.**

**CORPORATE SEAL, § 8.**

**LIMITATIONS ON POWER TO ENACT BY-LAWS, § 9.**

**RIGHT OF STOCKHOLDER TO INSPECT BOOKS, § 10.**

**§ 8. Corporate Seal.**

English rule. 50: 150.

American rule. 50: 152.

Effect of omission. 50: 154.

Effect of seal. 50: 155.

Formal requisites. 50: 156.

Seal of individual or officer. 50: 157.

Requisites of adoption of seal. 50: 158.

Evidence to establish. 50: 157, 158.

Effect of affixing corporate seal to a writing. 64: 260-265.

**§ 9. Limitations on Power to Enact By-laws.**

In general. 43: 152.

Delegation of power to enact. 43: 153.

Contravening common right, law or charter. 43: 153.

In restraint of trade. 43: 153, 154.

Restraining alienation of stock. 43: 154, 156.

Imposing individual liability for debts. 43: 154.

Imposing forfeitures. 43: 155, 156.

Fixing venue of civil actions. 43: 155.

Compelling submission to arbitration. 43: 155.

Creating lien in favor of corporation. 43: 156.

Divisibility of partially invalid by-laws. 43: 157.

Amendment, repeal and alteration. 43: 157.

**§ 10. Right of Stockholder to Inspect Books.**

Inspection and visitation distinguished. 107: 674.

Common-law rule. 107: 675.

Statutes and constitutions. 107: 675.  
 Provisions of charter or by-laws. 107: 676.  
 Motive or purpose of inspection. 107: 677.  
 Hostility or unfairness of parties. 107: 680.  
 Inconvenience to corporation. 107: 680.  
 Existence of controversy. 107: 681.  
 Time of examination. 107: 681.  
 Extent of examination. 107: 682.  
 Books subject to inspection. 107: 682.  
 Requiring books to be brought into state. 107: 683.  
 Taking abstracts and copies. 108: 683.  
 Persons entitled to inspection. 108: 684.  
 — Agent or attorney of stockholder. 108: 684.  
 Corporations subject to inspection. 108: 685.  
 — Banks. 108: 685.  
 — Foreign corporations. 108: 685.  
 Demand and refusal. 108: 686.  
 Mandamus proceedings. 108: 687.  
 Equitable remedies. 108: 688.  
 — Injunction and receivership. 108: 688.

### III. CAPITAL STOCK AND DIVIDENDS.

FRAUDULENT OVERISSUE OF STOCK, § 11.  
 STOCK SUBSCRIPTION CONTRACTS, § 12.  
 SUBSCRIPTION DISTINGUISHED FROM OTHER TRANSACTIONS, § 13.  
 LIABILITY OF SUBSCRIBERS, § 14.  
 PERSONS LIABLE ON SUBSCRIPTIONS, § 15.  
 IMPLIED CONDITIONS PRECEDENT TO LIABILITY OF SUBSCRIBERS, § 16.  
 REMEDIES TO ENFORCE LIABILITY OF SUBSCRIBERS, § 17.  
 RIGHT TO ASSESS STOCKHOLDERS, § 18.  
 RIGHTS OF HOLDERS OF PREFERRED STOCK, § 19.  
 TRANSFER OF SHARES, § 20.  
 TO WHAT EXTENT TRANSFERS MAY BE RESTRICTED, § 21.  
 COMPELLING ISSUE OR TRANSFER OF STOCK, § 22.  
 DUTY TO TRANSFER STOCK ON CORPORATE BOOKS, § 23.  
 RIGHTS OF PLEDGEEES OF STOCK, § 24.  
 LIABILITIES OF PLEDGEEES OF STOCK, § 25.  
 REMEDIES OF PLEDGEEES OF STOCK, § 26.  
 DIVIDENDS—RIGHTS OF LIFE TENANTS AND REMAINDERMEN, § 27.  
 WHEN DIVIDENDS ARE CASH OR STOCK DIVIDENDS, § 28.

#### § 11. Fraudulent Overissue of Stock.

Validity of certificates—Where stock is overissued. 87: 847.  
 — Where stock is spurious. 87: 848.  
 — Where stock is void by statute. 87: 849.  
 — Where stock is irregularly issued to complete transfer. 87: 851.  
 Remedies of parties—Action by purchaser against corporation for damages. 87: 851.  
 — Action for money paid under subscription. 87: 854.  
 — Action against officer issuing stock. 87: 854.  
 — Action against seller of stock. 87: 854.  
 — Action by corporation against officer issuing stock. 87: 855.  
 — Action by corporation or stockholders to cancel stock. 87: 855.  
 Estoppel of corporation to allege invalidity. 87: 856.  
 Estoppel of holder to allege invalidity—Overissued stock. 87: 859.  
 — Spurious stock. 87: 859.

#### § 12. Stock Subscription Contracts.

Nature of agreement. 136: 737.  
 Distinction between a subscription and an offer to subscribe. 136: 740.  
 Distinction between subscription and purchase of stock. 136: 741.  
 Liability is several. 136: 741.  
 Parties to the contract. 36: 742.  
 Parol subscriptions are valid. 136: 743.  
 Written subscription not variable by parol. 136: 744.  
 Formal requisites of written subscription. 136: 745.  
 Indefiniteness and uncertainty invalidates. 136: 746.  
 Incompleteness invalidates. 136: 746.  
 Subscription to void issue of stock. 136: 747.  
 Implied conditions. 136: 747.  
 Fraud or misrepresentation in procuring subscription invalidates it. 136: 748.

#### § 13. Subscription Distinguished from Other Transactions.

Purchase of stock. 93: 352.  
 Agreement to subscribe. 93: 352.

**§ 14. Liability of Subscribers.**

Several liability. 93: 368.

Persons liable. 93: 387.

Defenses—Statute of limitations. 93: 390.

— Inability of corporation to deliver stock. 93: 392.

— Miscellaneous defenses. 93: 393.

Conflict of laws. 93: 393.

Estoppel to assert ownership of stock. 136: 1038.

Specific performance of contract for sale of stock. 135: 689-700.

**§ 15. Persons Liable on Subscriptions.**

Calls made before subscription. 93: 387.

Trustee appearing on books as owner. 93: 388.

On transfer of shares—Persons appearing on books as owners. 93: 388.

— Good faith of transfer. 93: 389.

— Necessity for express promisee by transferee. 93: 389.

— Statutory provisions. 93: 390.

— Liability of bona fide assignee. 93: 390.

**§ 16. Implied Conditions Precedent to Liability of Subscribers.**

Organization of corporation. 93: 368.

Subscription to entire stock. 93: 368.

— Where contract shows contrary intent. 93: 370.

— Where capital stock is not fixed. 93: 374.

— What subscriptions may be counted. 93: 376.

— Increased stock. 93: 378.

— Preliminary expenses. 93: 379.

— Subscription for particular purpose. 93: 379.

— Waiver or estoppel to insist on condition. 93: 380.

Calls and assessments—Necessity. 93: 383.

Tender of certificates of stock. 93: 386.

**§ 17. Remedies to Enforce Liability of Subscribers.**

In general. 93: 353.

Action to enforce personal liability. 93: 354.

— Where there is no express promise. 93: 356.

Forfeiture or sale of shares. 93: 359.

Index-Digest—6

— Necessity for compliance with statute. 93: 366.

— Necessity for notice or call before. 93: 367.

Attachment and execution of shares. 93: 367.

Time to sue for calls on subscriptions to stock. 136: 479-482.

**§ 18. Right to Assess Stockholders.**

Definition of assessment. 76: 126.

Who may make assessment. 76: 127.

On unpaid stock. 76: 127.

On paid-up stock. 76: 128.

When assessments may be made. 76: 130.

Assessments authorized by statute. 76: 131.

On stock issued as paid up. 76: 134.

**§ 19. Rights of Holders of Preferred Stock.**

What is preferred stock. 73: 227.

— "Guaranteed" and "interest-bearing" stock. 73: 227.

Preferred stockholders as creditors. 73: 227.

Rights as stockholders. 73: 231.

Right to dividends. 73: 232.

Guaranteed and preferred dividends the same. 73: 235.

Preference over common stock. 73: 237.

Accumulations and arrears. 73: 238.

Right to vote. 73: 239.

— May be given sole right. 73: 239.

Liabilities. 73: 239.

Distribution of new stock. 73: 240.

Rights of assignees. 73: 240.

Stock bearing interest. 73: 241.

Special stock—Massachusetts. 73: 241.

Remedies of preferred stockholders. 73: 242.

Rights on dissolution of corporation. 73: 243.

**§ 20. Transfer of Shares.**

Liability of transferee for unpaid calls. 6: 838.

**§ 21. To What Extent Transfers may be Restricted.**

Nature of shares of stock. 57: 379.

Right of alienation. 57: 379.

Where restrictions must appear. 57: 380.

Statutes, charters, articles, agreements and usage. 57: 381.

Validity of restraints imposed by by-laws. 57: 384.

Prohibiting transfer by one indebted to corporation. 57: 386, 395.

Validity of transfer not complying with rules. 57: 388.

— Failure to enter in books. 57: 389.

Notice of transfer. 57: 392.

Compelling transfer on corporate books. 57: 393.

Existence of lien as restraining transfer. 57: 393.

## § 22. Compelling Issue or Transfer of Stock.

Origin of remedy. 133: 723.

Mandamus—To transfer stock. 133: 724.

— To issue stock. 133: 727.

— Exception where stock is sold at judicial sale. 133: 728.

Suit in equity. 133: 729.

## § 23. Duty to Transfer Stock on Corporate Books.

Force and effect of by-laws. 136: 1012–1030.

Duty to register transfers on the books. 136: 1030–1034.

Right of owner to require transfer. 136: 1035–1037.

Rights of creditors and third persons. 136: 1037.

Liabilities and remedies. 136: 1039–1041.

## § 24. Rights of Pledges of Stock.

To protect corporate assets. 121: 195.

To inspect corporate books. 121: 196.

To vote at corporate meeting. 121: 196.

To receive dividends. 121: 197.

## § 25. Liabilities of Pledges of Stock.

In general. 1: 783, 784; 68: 542–546.

To creditors of corporation—When transfer is on books of corporation. 121: 197.

— When transfer is not on books. 121: 198.

— Evasion of liability by colorable transfers. 121: 198.

For assessments on stock. 121: 199.

Pledge of national bank stock. 121: 199.

For taxes. 121: 200.

Exemption from liability. 121: 200.

## § 26. Remedies of Pledges of Stock.

Suit on principal debt. 121: 200.

Sale of stock—In general. 121: 201.

— Demand and notice before sale. 121: 201.

— Under power without demand and notice. 121: 202.

— Private and public sales. 121: 203.

— Protection of pledgor's interests. 121: 203.

— Purchase by pledgee. 121: 203.

— Obligation of pledgee to sell. 121: 204.

Foreclosure in equity. 121: 205.

Care and protection of collateral. 121: 205.

Bar of statute of limitations. 121: 205.

## § 27. Dividends—Rights of Life Tenants and Remaindermen.

Old doctrine. 118: 167.

New doctrine. 118: 167.

When dividends are declared from earnings made before the creation of the trust. 118: 168.

## § 28. When Dividends are Cash or Stock Dividends.

Doctrine of state courts. 118: 162–165.

Doctrine of federal supreme court. 118: 166.

## IV. MEMBERS AND STOCKHOLDERS.

EXPULSION, § 29.

MEETINGS, § 30.

RECORDS OF MEETING, § 31.

AGREEMENTS TO CONTROL FUTURE

VOTING OF STOCK, § 32.

STOCKHOLDER'S LIABILITY FOR COR-

PORATE DEBTS, § 33.

ENFORCEMENT OF STOCKHOLDER'S

LIABILITY IN OTHER STATES, § 34.

SUING ON BEHALF OF CORPORATION,

§ 35.

LIABILITY OF PERSONS HOLDING

STOCK AS SECURITY, § 36.

## § 29. Expulsion.

Implied power—Moneyed corporations. 114: 25.

— Nonstock corporation. 114: 25.

Delegation of power to committee or directors. 114: 26.

Adoption of rules governing expulsion. 114: 26.

Notice and opportunity to defend. 114: 27.

Grounds—In general. 114: 27.



- Acts hostile to corporation. 114: 27.
- Defamation of member of corporation. 114: 28.
- Ungentlemanly conduct or questionable business practices and breach of contracts. 114: 29.
- Engaging in liquor business. 114: 30.
- § 30. Meetings.
  - Rights of presiding officer to reject votes. 56: 138, 139.
- § 31. Records of Meeting.
  - Effect as evidence. 13: 551.
  - Right to amend. 13: 553.
- § 32. Agreements to Control Future Voting of Stock.
  - Binding effect of agreement or irrevocable proxy to vote stock at corporate elections in a particular manner or to permit others to so vote it against his protest. 56: 139-153.
  - Validity of voting trusts. 56: 140-153.
  - Validity of agreements of holders to vote their stock as a unit. 56: 153.
- § 33. Stockholder's Liability for Corporate Debts.
  - No common-law liability for unpaid subscription. 3: 806.
  - Unpaid subscriptions subject to garnishment. 3: 806.
  - Mandamus by creditors to compel officers to make call. 3: 807.
  - Unpaid subscriptions as trust fund for creditors. 3: 808.
  - Equitable jurisdiction to compel payment or make calls for unpaid subscriptions. 3: 810.
  - Creditor must first exhaust remedies against corporation. 3: 814.
  - Judgment against corporation is conclusive in suit to reach unpaid subscription. 3: 814.
  - Parties to equitable suit to compel payment of subscriptions. 3: 815.
  - Decree in suit to compel payment of subscriptions. 3: 816.
  - Liability only extends to unpaid subscription. 3: 816.
  - Payment for shares need not be in cash. 3: 817.
  - Effect of withdrawal, release or forfeiture of stock. 3: 821.
  - Conditions limiting or relieving liability for unpaid subscriptions. 3: 823.
  - Fraud and mistake as affecting liability. 3: 824.
  - Setoff of debts due stockholder. 3: 826.
  - Estoppel to question validity of corporate organization. 3: 827.
  - Statute of limitations begins to run when call is made. 3: 827.
  - Defenses in suits for unpaid subscriptions. 3: 829.
  - Who are stockholders liable for unpaid subscriptions. 3: 829.
  - Powers of assignees and receivers with respect to unpaid subscriptions. 3: 833.
  - Statutory liability of stockholders. 3: 834.
  - Stockholder not individually liable at common law. 3: 834.
  - Liability can only be imposed by constitutions, charters or statutes. 3: 835.
  - Construction of statutes imposing liability. 3: 836.
  - Extent of individual liability. 3: 836.
  - Liability to extent of unpaid subscriptions. 3: 837.
  - Unlimited liability. 3: 838.
  - Liability to "extent" or "amount" of stock. 3: 838.
  - Liability "in proportion" to amount of stock. 3: 839.
  - Liability contingent on certain fact or event. 3: 840.
  - Liability under banking act. 3: 841.
  - Liability for debts due servants and special debts. 3: 842.
  - "Debts" for which stockholders are liable. 3: 844.
  - Nature of statutory liability. 3: 846.
  - For exclusive benefit of creditors. 3: 847.
  - Not sureties or guarantors. 3: 848.
  - Liability as partners. 3: 849.
  - Secondary to that of corporation. 3: 850.
  - Joint or several. 3: 852.
  - Mode of enforcing statutory liability. 3: 854.
  - Parties to suit to enforce statutory liability. 3: 857.
  - Judgment against corporation concludes stockholder. 3: 858.

- Who are stockholders personally liable. 3: 858.
- Effect of transfer of shares. 3: 860, 864.
- Pledges or representatives. 3: 865.
- Transfer must be bona fide. 3: 866.
- Stock-books as evidence of ownership. 3: 866.
- Bill for discovery of stockholders. 3: 867.
- Married women. 3: 867.
- Legislative power to impose, repeal or modify statutory liability. 3: 867.
- Enforcement of statutory liability outside of state. 3: 868.
- Survival of statutory liability against estate of deceased stockholder. 3: 869.
- Priority of creditor first suing to enforce statutory liability. 3: 869.
- Actions between stockholders for contribution. 3: 870.
- Setoff of debt due stockholder. 3: 871.
- Estoppels in actions to enforce statutory liability. 3: 872.
- Statute of limitations. 3: 872.
- Effect of stockholder's discharge in bankruptcy. 3: 872.
- Rights of stockholder who has paid more than his share of corporate liabilities. 71: 40, 41.
- § 34. Enforcement of Stockholder's Liability in Other States.**
- Liability enforceable everywhere if unconditional. 37: 168.
- Statutes imposing liability not enforceable if penal. 37: 169.
- Remedies for enforcement of personal liability. 37: 171.
- When stockholders may be sued directly — In equity. 37: 172.
- At law. 37: 172.
- Foreign courts interfere only when complete justice can be done. 37: 173.
- When judgment against corporation is not a prerequisite to suit against stockholder. 37: 175.
- Foreign suits in aid of proceedings in domestic forum. 37: 175.
- § 35. Suing on Behalf of Corporation.**
- Necessity that suits be brought by corporation. 97: 30.
- Necessity that corporate remedies be first exhausted. 97: 31.
- Demand of corporation to sue. 97: 33.
- Corporation in hands of receiver. 97: 33.
- Excuses for failure to demand corporation to sue. 97: 34.
- Suits in federal courts. 97: 38.
- Causes of action maintainable. 97: 39.
- Fraud. 97: 42.
- Voidable and ultra vires acts. 97: 43.
- Discretionary acts. 97: 43.
- Specific performance of contracts. 97: 44.
- Good faith of stockholders. 97: 45.
- Parties — Corporation as necessary party. 97: 45.
- Stockholders and directors. 97: 46.
- Authority to sue must appear. 97: 48.
- Misjoinder of corporate and individual causes. 97: 48.
- Acquiescence and estoppel. 97: 49.
- Laches. 97: 49.
- Statute of limitations. 97: 50.
- Who may sue as stockholder. 97: 50.
- Subscriber. 97: 51.
- Time of becoming stockholder. 97: 51.
- Holders of insignificant share of stock. 97: 52.
- § 36. Liability of Persons Holding Stock as Security.**
- Liability as stockholder. 68: 542; 121: 197-200.
- Corporation as pledgee of its stock. 68: 543.
- Effect of transfer by pledgee. 68: 543.
- Transfer to irresponsible agent. 68: 544.
- Effect of failure to register transfer. 68: 544.
- Exemption of pledgee by statute. 68: 546.
- Stock pledged by corporation. 68: 546.
- V. OFFICERS AND AGENTS.**
- RIGHT TO COMPENSATION FOR SERVICES, § 37.**
- PERSONAL LIABILITY TO THIRD PERSONS, § 38.**
- RESIGNATION, § 39.**
- § 37. Right to Compensation for Services.**
- Interest against duty. 136: 910.
- When they are stockholders. 136: 915.

Effect of custom, usage or contract. 136: 916-919.  
 When they are not stockholders. 136: 919.  
 When compensation is illegal. 136: 919.  
 Past services. 136: 920.  
 Services outside of regular duties. 136: 921.  
 Amount of compensation. 136: 924.

### § 38. Personal Liability to Third Persons.

Classification of liability. 48: 913.  
 Liability of corporation as excluding that of officer. 48: 913.  
 Liability on contracts. 48: 914.  
 Where no corporation exists. 48: 914.  
 Ultra vires contracts. 48: 914.  
 Acts without authority. 48: 916.  
 Torts of agent. 48: 920, 922.  
 Fraud or willful misrepresentation. 48: 920.  
 Trover and conversion. 48: 922.  
 Acts of inferior officers or agents. 48: 922.  
 Corporation cannot authorize tort. 48: 922.  
 Negligence. 48: 923.  
 Negligence of corporation. 48: 924.  
 Negligence in doing an act on behalf of the corporation. 48: 926.  
 Mismanagement by directors resulting in loss to creditors. 48: 927.

### § 39. Resignation.

Right to resign—In general. 95: 578.  
 — As affected by motive or purpose. 95: 579.  
 Necessity for acceptance. 95: 579.  
 Necessity for appointment of successor. 95: 579.  
 Mode of making. 95: 580.  
 What amounts to. 95: 580.  
 Effect on liability as officer. 95: 580.  
 Contract to resign—Validity and effect. 95: 581.

## VI. DIRECTORS.

IN GENERAL, § 40.  
 RIGHT TO COMPENSATION FOR SERVICES, § 41.  
 VALIDITY OF CONTRACT BETWEEN DIRECTOR AND CORPORATION, § 42.  
 LIABILITY FOR TORTS, § 43.  
 NOTICE OF DIRECTORS' MEETING, § 44.

### § 40. In General.

As trustees. 17: 298.  
 Dealings with corporation. 17: 298.

Right to act where interests are adverse to corporation. 17: 300.  
 Right to contract with corporation. 17: 300, 307.  
 Forming another corporation to contract with theirs. 17: 301.  
 Accounting for profits from dealings with corporation. 17: 303.  
 Personal interest in transactions for corporation. 17: 304.  
 Contracts in name of another for benefit of director. 17: 305.  
 Rescission of contracts between directors and corporation. 17: 305.  
 Who may question contracts between directors and corporation. 17: 306.  
 Right to sue corporation for a debt. 17: 307.  
 — Preference over other creditors. 17: 307.  
 Ratification of contracts. 17: 308.

### § 41. Right to Compensation for Services.

Interest against duty. 136: 910.  
 When they are stockholders. 136: 913, 914.  
 Effect of usage, custom or contract. 136: 916-919.  
 When compensation is illegal. 136: 919.  
 Past services. 136: 920.  
 Services outside regular duties. 136: 921.  
 Amount of compensation. 136: 924.

### § 42. Validity of Contract Between Director and Corporation.

Trustee may not buy at his own sale. 139: 599; 17: 300.  
 Trustee's personal interest antagonistic to trust. 139: 601.  
 Who is a trustee. 139: 602.  
 Director as trustee. 139: 602.  
 Persons trustees or not informally. 139: 603.  
 Competency of trustee to hold under trust sale. 139: 605.  
 Extreme cases. 139: 606.  
 Trust character not simple beneficence. 139: 608.  
 Right of director to enforce his remedy against corporation. 139: 611.  
 Sanctioned dealings between corporation and officer. 139: 612.  
 Director not permitted to contract with himself. 139: 614.  
 Director deals with corporation as stranger. 139: 616.

Contract for salary. 139: 619.  
 Affirmance by corporation. 139: 620.  
 Suit by minority stockholders. 139: 621.  
 Restitution by director wrongfully contracting. 139: 623.  
 Stranger co-operating with offending officer. 139: 624.  
 Effect of acquiescence. 139: 624.  
 Right of third person to set up director's incapacity. 139: 627.

#### § 43. Liability for Torts.

Directors as agents. 74: 610.  
 Fraud. 74: 611.  
 Causing insolvency of corporation. 74: 611.  
 Personal injuries. 74: 611.  
 Violation of statute or ordinance. 74: 611, 612.  
 Abuse of trust or misapplication of funds. 74: 612.  
 Issuing illegal stock. 74: 612.  
 Waste or loss of corporate funds or property. 74: 612.  
 Liability for misrepresenting solvency of corporation. 8: 604.  
 Liability for negligence. 17: 96-101.

#### § 44. Notice of Directors' Meeting.

Necessity where meeting is stated and general. 3: 69.  
 Necessity where meeting is special. 3: 69.  
 Effect of failure to give notice on validity of proceedings of quorum. 3: 70.  
 Effect of failure to provide time and manner of giving notice. 3: 70.

### VII. POWERS AND LIABILITIES.

POWERS IN GENERAL, § 45.  
 POWER TO ACQUIRE STOCK IN OTHER CORPORATIONS, § 46.  
 POWER TO PURCHASE OWN STOCK, § 47.  
 IMPLIED POWER TO BORROW MONEY, § 48.  
 LIABILITY FOR DEBTS OF PRECEDING FIRM, § 49.  
 LIABILITY FOR EXEMPLARY DAMAGES, § 50.  
 CRIMINAL RESPONSIBILITY, § 51.

#### § 45. Powers in General.

Nature of corporate powers. 111: 310.  
 Extent of implied powers. 111: 310.

#### § 46. Power to Acquire Stock in Other Corporations.

Incidental powers of corporation. 36: 134.  
 Subscription to stock of other corporations. 36: 134.  
 Purchase otherwise than by subscription. 36: 136.

#### § 47. Power to Purchase Own Stock.

In general. 33: 339.  
 American rule. 33: 339.  
 Banking corporation. 33: 342.  
 Stock not merged or reduced by purchase. 33: 343.  
 Purchase as affected by creditor's rights. 33: 343.

#### § 48. Implied Power to Borrow Money.

Construction of charters. 111: 311.  
 Distinction between want of power and irregularity in its exercise. 111: 311.  
 General rule. 111: 312.  
 Various classes of corporations. 111: 316.  
 To issue evidence of debt or security for loan. 111: 320.  
 Limitation of amount that may be borrowed. 111: 322.  
 Effect of ultra vires loan. 111: 322.  
 Effect of law prohibiting issue of stock or bonds except for value actually received. 111: 326.  
 Prohibitions against fictitious increase of debt. 111: 329.  
 Charter limitations on amount of debt. 111: 329.  
 Right to lend credit or guarantee bonds of other companies. 111: 330.

#### § 49. Liability for Debts of Preceding Firm.

Generally. 59: 547.  
 Assumption of liability. 59: 548.  
 Succession and consolidation or merger. 59: 549.  
 Following assets in cases of fraud. 59: 551.  
 Banks. 59: 553.  
 Railroads. 59: 554.  
 — Succession. 59: 558.  
 — Merger or consolidation. 59: 559.

#### § 50. Liability for Exemplary Damages.

Generally. 59: 589.  
 Assault and battery. 59: 592.

Contempt and breach of contract. 59: 593.

Libel. 59: 594.

Negligence. 59: 595.

Malicious prosecution. 59: 595.

Death by wrongful act. 59: 599.

Trespass. 59: 599.

Trover and conversion. 59: 601.

Carriers. 59: 601, 603.

Employers. 59: 602.

Municipal corporations. 59: 602.

Railroads. 59: 602.

Street railroads. 59: 608.

Sleeping-car companies. 59: 608.

Telegraph companies. 59: 608.

### § 51. Criminal Responsibility.

Criminal jurisdiction over corporations. 133: 775.

Misfeasance and nonfeasance. 133: 775.

Nuisances. 133: 777.

Manslaughter. 133: 778.

Other offenses. 133: 779.

Corporations in hands of receiver. 133: 779.

Mode of punishment. 133: 779.

Measure of punishment. 133: 780.

## VIII. PROPERTY, CONTRACTS AND CONVEYANCES.

SALES OF ENTIRE PROPERTY OR ASSETS, § 52.

WHAT CONSTITUTES WITHDRAWAL OR DIVISION OF ASSETS, § 53.

DOCTRINE OF ULTRA VIRES, § 54.

WHO MAY QUESTION UNAUTHORIZED CONVEYANCE OR DEVISE TO CORPORATION, § 55.

### § 52. Sales of Entire Property or Assets.

What corporations may sell all their assets. 103: 548.

— Corporations doing unprofitable business. 103: 552.

— Where sale is practical extinction. 103: 553.

— Quasi-public corporations. 103: 555.

Distinction between sale, consolidation and lease. 103: 556.

Who may purchase entire assets. 103: 557.

— Other corporations and corporations creating monopoly. 103: 559.

— Officers or stockholders. 103: 560.

— Who may object to sale. 103: 562.

Effect of fraud in sale. 103: 563.

Consideration for sale. 103: 563.

— Stock or bonds of other corporations. 103: 564.

General requirements of sale. 103: 568.

Ratification of sale. 103: 569.

General effect of sale. 103: 569.

Disposition of proceeds of sale. 103: 571.

Effect of laches on the part of dissenting stockholders. 103: 571.

### § 53. What Constitutes Withdrawal or Division of Assets.

General principles. 57: 63.

Capital stock as trust fund and its pursuit. 57: 65.

Increase or decrease of capital stock. 57: 67.

Paying out capital stock for purchase of property. 57: 68.

Release of liability for subscription. 57: 69.

Destruction or diminution of assets. 57: 70.

Waste or loss of assets by directors. 57: 71.

Division of funds of temperance corporation among members. 57: 72.

Other forms of withdrawal. 57: 72.

Assignment for creditors and dissolution. 57: 76.

Pursuit of withdrawn assets. 57: 65, 81.

### § 54. Doctrine of Ultra Vires.

In general. 70: 156.

Misuse of the term. 70: 157.

Proper use and meaning of the term. 70: 158.

Judicial prejudice against. 70: 159.

What contracts are ultra vires. 70: 160.

Contracts transferring or leasing property. 70: 163.

Guaranty and suretyship of negotiable paper. 70: 163.

Purchase of stock. 70: 164.

Executory contracts. 70: 165.

Executed contracts. 70: 166.

Estoppel by receipt of benefits. 70: 167.

Remedy where contract partly performed. 70: 169.

Actions on ultra vires contracts—Rule in federal courts. 70: 171.

— Rule in state courts. 70: 173.

Recovery of benefits received. 70: 173.

Duty to ascertain scope of corporate powers. 70: 176.  
 Doctrine that state alone may raise question. 70: 178.  
 Conclusion. 70: 180.

**§ 55. Who may Question Unauthorized Conveyance or Devise to Corporation.**

State alone can question. 60: 318, 319.  
 Rights of heirs to question devise. 60: 319, 320.  
 Effect of statutes. 60: 320.  
 Unauthorized devise as avoiding will. 60: 321.

**IX. INSOLVENCY AND RECEIVERS.**

INSOLVENCY, §§ 56, 57.  
 PREFERENCES BY INSOLVENT CORPORATIONS, § 58.  
 APPOINTMENT OF RECEIVERS, § 59.

**§§ 56, 57. Insolvency.**

Assets of insolvent corporation as trust fund. 42: 767.

**§ 58. Preferences by Insolvent Corporations.**

Right to prefer creditors. 45: 826.  
 In favor of stockholders. 45: 829, 830-833.  
 In favor of directors and officers. 45: 833, 835.

**§ 59. Appointment of Receivers.**

Inherent jurisdiction of equity courts. 118: 198.  
 Discretion of court. 118: 202.  
 Grounds for appointment. 118: 203.  
 Who may apply for. 118: 205.  
 — Stockholders. 118: 206.  
 — Creditors. 118: 206.

**X. CONSOLIDATION.**

DEFINITION OF CONSOLIDATION, § 60.  
 INTERSTATE CONSOLIDATION, § 61.  
 STATUS OF CONSTITUENT CORPORATIONS, § 62.  
 STATUS OF CONSOLIDATED CORPORATIONS, § 63.  
 TRANSMISSION OF CORPORATE POWERS AND PRIVILEGES, § 64.  
 TRANSMISSION OF LIABILITIES OF CONSTITUENT COMPANIES, § 65.  
 RIGHTS OF STOCKHOLDERS, § 66.

**§ 60. Definition of Consolidation.**

In general. 89: 607.  
 Distinguished from merger. 89: 608.

Distinguished from reorganization. 89: 609.

Distinguished from purchase. 89: 609.

Distinguished from lease. 89: 611.

Distinguished from amalgamation. 89: 612.

**§ 61. Interstate Consolidation.**

Status of consolidated company—In general. 89: 649.

— May transact business wherever incorporated. 89: 651.

— Subject in each state to laws of state. 89: 651.

Taxation of consolidated company in each state. 89: 652.

Taxation of capital stock and shares. 89: 653.

Taxation for privilege of consolidation. 89: 654.

Jurisdiction of courts over—General rule. 89: 654.

— Federal courts. 89: 655.

**§ 62. Status of Constituent Corporation.**

A question of legislative intent. 89: 616.

Usually dissolved by consolidation. 89: 616.

Continued existence for special purposes—By implication. 89: 617.

— By statute for protection of creditors. 89: 618.

— By statute to continue pending actions. 89: 620.

Relation between constituent and consolidated corporations during continued existence of former. 89: 620.

**§ 63. Status of Consolidated Corporation.**

General rule. 89: 612.

Where powers are conferred by reference to powers of constituent corporations. 89: 614.

Takes full term of corporate existence. 89: 615.

**§ 64. Transmission of Corporate Powers and Privileges.**

Consolidated company takes those of constituents. 89: 624.

Nature of powers transmitted. 89: 624.

Privileges of stockholders, servants, etc. 89: 624.

Exemption from taxation. 89: 625.

Collection of subscriptions to stock of constituents. 89: 628.

Municipal aid. 89: 629.

Exemptions and privileges cover only property affected before consolidation. 89: 632.

Effect of existing constitutional provisions prohibiting exemptions, municipal aid, etc. 89: 633.

—— Where corporation had previous authority to consolidate. 89: 635.

#### § 65. Transmission of Liabilities of Constituent Companies.

By statute. 89: 636.

By consolidation agreement. 89: 637.

In absence of statute or agreement. 89: 637.

Torts of constituent companies. 89: 638.

Contracts of constituents. 89: 639.

Effect of consolidation agreement relieving new company. 89: 642.

Liens and mortgages on property of constituent. 89: 642.

Priority between mortgages made by old and new company. 89: 643.

Lien of unsecured creditors on property of constituents. 89: 644.

Effect of consolidation agreement that new company assume. 89: 646.

Actions to enforce liability. 89: 646, 647.

Effect of consolidation on pending actions. 89: 648.

#### § 66. Rights of Stockholders.

Those not assenting to consolidation—  
Power to prevent consolidation. 89: 621.

—— Power to withdraw. 89: 621.

—— Liability of corporate officers to. 89: 622.

—— Effect of laches. 89: 622.

Those assenting to consolidation—In general. 89: 623.

—— Right to stock in consolidated company. 89: 623.

### XI. DISSOLUTION AND FORFEITURE OF FRANCHISE.

DISSOLUTION, § 67.

EFFECT OF DISSOLUTION OR REPEAL OF CHARTER, § 68.

ACTS AND PROCEEDINGS OF DISSOLVED CORPORATIONS, § 69.  
FORFEITURE OF FRANCHISE, § 70.  
SAME, § 71.

#### § 67. Dissolution.

For misuse or nonuse of franchise. 8: 201.

Right of stockholder to maintain a bill to dissolve the corporation and distribute the assets. 91: 33.

#### § 68. Effect of Dissolution or Repeal of Charter.

Reversion of land to former owner. 7: 717.

—— Rule abolished in America. 7: 719.

What franchises, rights and contracts survive. 7: 721.

—— Franchise to be used and enjoyed. 7: 722.

—— Privilege from taxation. 7: 723.

—— After repeal of charter. 7: 723, 724.

—— Rights remaining in creditors and stockholders. 7: 725.

Effect on pending suits. 7: 725.

#### § 69. Acts and Proceedings of Dissolved Corporations.

Effect of dissolution in general. 134: 309.

Right to act in name of dissolved corporation. 134: 310.

—— Acquiring title and rights. 134: 310.

Making and carrying out contracts. 134: 310.

—— Commencing actions and suits. 134: 310.

—— Maintaining pending suits, abatement. 134: 311.

—— Proceedings under execution. 134: 312.

—— Transferring stock. 134: 312.

Statutory extension of right and power. 134: 312.

—— Conclusiveness of statutory remedies. 134: 313.

—— Continuing corporate powers for some designated time or purpose or authorizing further use of name. 134: 313.

#### § 70. Forfeiture of Franchise.

For misuse. 5: 803.

For noncompliance with conditions of grant. 5: 803.

By lapse of time. 5: 804.  
 Declared by law operates without judicial action. 5: 805.  
 Franchise to be a corporation. 5: 806.

### § 71. Same.

General principles. 8: 179.  
 For willful misuse or nonuser. 8: 180.  
 Not favored by courts. 8: 181.  
 Substantial performance prevents. 8: 182.  
 Public must have an interest in the causes. 8: 182.  
 Willful abuse or neglect is necessary. 8: 183.  
 Effect of imposing penalty for act or omission. 8: 184.  
 Excuse for cause of forfeiture. 8: 185.  
 Misuse or nonuse by one department only. 8: 186.  
 Failure to observe express conditions. 8: 186.  
 Failure to observe implied conditions. 8: 188.  
 Suspension of specie payments by bank. 8: 189.  
 Abandonment of business, transfer of assets and insolvency. 8: 190.  
 Violation of general law—Monopolies. 8: 191, 192.  
 State must initiate proceedings. 8: 193.  
 Forfeiture is exclusively a judicial question. 8: 197.  
 Proceedings to declare forfeiture. 8: 198.  
 Equity courts cannot decree forfeiture. 8: 200.  
 Waiver of forfeiture. 8: 200.  
 Dissolution of corporation for misuse or nonuse of franchise. 8: 201.

## XII. FOREIGN CORPORATIONS.

IN GENERAL, § 72.

JURISDICTION OF COURTS OVER, § 73.

MODE OF SERVING PROCESS UPON, § 74.

### § 72. In General.

Right of courts to interfere with internal affairs of foreign corporations. 137: 307.  
 Effect of judgment against. 85: 938.

### § 73. Jurisdiction of Courts Over.

Citizenship and residence for jurisdictional purposes. 85: 906.  
 What brings foreign corporation within jurisdiction. 85: 908.

— What is a coming within state. 85: 910.  
 — Mere presence of agent in state. 85: 910.  
 — Doing business in state. 85: 913, 914.  
 — Ceasing to do business in state. 85: 917.  
 Jurisdiction of national courts. 85: 918.  
 Causes of action over which jurisdiction extends. 85: 921.  
 Discretion of court to refuse to exercise jurisdiction. 85: 925.

### § 74. Mode of Serving Process upon.

Designating by contract. 85: 926.  
 Power of state to prescribe. 85: 927.  
 — Service on agent or servant. 85: 929.  
 Where corporation fails to designate agent. 85: 929.  
 Managing agents who may be served. 85: 930.  
 Agents who may be served. 85: 933.  
 Service on agents whose authority has terminated. 85: 935.  
 Compliance with statutory mode. 85: 936.  
 Cumulative modes. 85: 936.  
 Return of service. 85: 937.

## CORPSES.

Property and possessory rights in. See Dead Bodies, § 1.

## CORPUS DELICTI.

Proof of, by circumstantial evidence. See Criminal Law, § 38.

## CORRECTION.

Of mistakes in writings in equity. See Reformation of Instruments, §§ 1-6.

## CORROBORATION.

Of accomplice. See Criminal Law, §§ 33, 34.

## COSERVANTS.

See Master and Servant.

## COSTS.

Of quarantining diseased animals. See Animals, § 8.  
 Mandamus to compel awarding or taxing of costs. See Mandamus, § 6.

### § 1. Attorney's Fees as.

Constitutionality of statutes allowing attorney's fees to successful party. 79: 178-186.



### **COSURETIES.**

Order of liability. See Principal and Surety, § 3.

Contribution between. See Principal and Surety, § 7.

### **COTENANCY.**

In mines. See Mines and Minerals, §§ 11-18.

### **COTTON.**

Removal of cotton in seed may be declared a crime. See Criminal Law, § 1.

Police power to regulate sale of cotton in the seed. See Constitutional Law, § 7.

### **COTTON-HOUSE.**

As building subject to arson. See Arson, § 2.

### **COUNSEL.**

See Attorney and Client.

### **COUNSEL-FEES.**

See Attorneys' Fees.

### **COUNTERCLAIMS.**

See Setoff and Counterclaim.

### **COUNTERMAND.**

See Rescission; Revocation.

Of executory contract of sale. See Sales, § 12.

### **COUNTIES.**

IN GENERAL, § 1.

NEW COUNTIES, § 2.

LIABILITY OF BOARDS AND OFFICERS TO INDIVIDUALS FOR MISFEASANCE OR NONPERFORMANCE OF DUTY, § 3.

LIABILITY OF SURETIES ON BONDS OF TREASURER, § 4.

EFFECT OF ALLOWANCE OR REJECTION OF CLAIM, § 5.

ESTOPPEL TO CONTEST ILLEGAL CLAIMS AND EXPENDITURES, § 6.

Review of proceedings of boards or officers on certiorari. See Certiorari, § 3.

Application of doctrine of estoppel to. See Estoppel, § 2.

Persons concluded by judgment against county. See Judgment, § 40.

Applicability of statute of limitations to actions by. See Limitations, § 7.

Who are responsible bidders for public work. See Municipal Corporations, § 15.

#### **§ 1. In General.**

When statute of limitations runs against county warrants. 8: 206.

Denial of county records on information and belief. 133: 121.

#### **§ 2. New Counties.**

Power of legislature to create. 20: 676.

Power to validate illegal organization. 20: 676.

Taxation to pay proportion of debt of old county. 20: 677.

Division of property on severance and annexation. 20: 677.

Apportionment of debts on severance and annexation. 20: 678.

When new county becomes a political entity. 20: 680.

Effect of creation of new county on officers of old one. 20: 680.

#### **§ 3. Liability of Boards and Officers to Individuals for Misfeasance or Nonperformance of Duty.**

Various ministerial duties. 95: 80.

Maintenance of streets and roads. 95: 81.

Discretionary duties. 95: 83.

Legislative functions. 95: 84.

#### **§ 4. Liability of Sureties on Bonds of Treasurer.**

Failure to make true reports. 91: 555.

Refusal to pay legal warrant. 91: 556.

Payment of illegal warrants. 91: 556.

Improper issuance of tax receipts. 91: 557.

Misappropriation of public funds. 91: 557.

— Funds received without authority. 91: 558.

— Funds improperly collected. 91: 558.

— Funds not actually received. 91: 560.

Duties imposed after execution of bond. 91: 561.

Funds covered by special bond. 91: 561.

Deposit of funds in bank. 91: 561.

#### **§ 5. Effect of Allowance or Rejection of Claim.**

In general. 55: 203.

Allowance of invalid claim. 55: 208.

Reconsideration of allowance. 55: 209.

Action upon disallowed claim. 55: 209.

#### **§ 6. Estoppel to Contest Illegal Claims and Expenditures.**

In general. 137: 358.

By pleadings in civil actions. 137: 361.

By issuing illegal orders. 137: 361.

By illegally compromising suit. 137: 362.

By illegal expenditure for legal purpose. 137: 362.  
 By illegal payments on advice of counsel. 137: 363.  
 Void or illegal acts. 137: 363.  
 Receiving dividends from insolvent bank. 137: 365.  
 Illegal contracts of county boards. 137: 365.  
 Representations as to boundaries. 137: 365.  
 Mistakes of officers. 137: 365.  
 Recovery of fees illegally paid. 137: 366.  
 Claim on contract executed before appropriation. 137: 367.

### COUNTING VOTES.

Irregularities in. See Elections, § 3.

### COURSE.

Duty of sail vessel to keep course. See Collision, § 1.

### COURSE AND DISTANCE.

Controlling effect of calls for. See Boundaries, § 5.

### COURT RULES.

See Courts, § 7.

### COURTS.

JURISDICTION OVER CITIZENS OF ANOTHER STATE OR COUNTRY, § 1.  
 JURISDICTION TO REVIEW PROCEEDINGS TO DETERMINE ELECTION AND QUALIFICATION OF LEGISLATORS, § 2.

AMOUNT IN CONTROVERSY, § 3.

EVIDENCE ALIENDE TO SHOW JURISDICTION, § 4.

CONCURRENT AND CONFLICTING JURISDICTION, § 5.

LIMITATIONS ON DOCTRINE OF STARE DECISIS, § 6.

RULES OF COURT, § 7.

FILING PAPERS, § 8.

Jurisdiction over nonresidents. See Absentees, § 1.

Jurisdiction over associations. See Associations, §§ 1, 3.

Summary jurisdiction over attorneys. See Attorney and Client, § 1.

Right of members of beneficial associations to resort to courts. See Beneficial Associations, § 8.

Clerks of court. See Clerks of Court.

Acts constituting contempt of court. See Contempt.

Jurisdiction to punish contempt. See Contempt, § 4.

Validity of contracts ousting jurisdiction or controlling procedure. See Contracts, § 8.

Jurisdiction of interstate consolidated corporations. See Corporations, § 61.

Jurisdiction over foreign corporations. See Corporations, § 73.

Right to question existence of public use. See Eminent Domain, § 9.

Power to direct stay of execution. See Execution, § 4.

Courts whose proceedings may be reviewed on habeas corpus. See Habeas Corpus, § 4.

Judicial officers. See Judges, §§ 1-3.

Jurisdiction of actions on lost instruments. See Lost Instruments, § 1.

Mandamus against judicial officers and tribunals. See Mandamus, § 6.

Control of exercise of police power of cities. See Municipal Corporations, § 4.

Proceedings to prevent debtors from departing from jurisdiction or removing their property. See Non Execut, §§ 1-4.

Jurisdiction to issue writ of ne execut. See Non Execut, § 4.

Invalidity of judgment of court exceeding jurisdiction. See Judgment, § 2.

Application of payments by court. See Payment, § 7.

Which may issue writ of prohibition. See Prohibition, § 3.

To what courts writ of prohibition may issue. See Prohibition, § 4.

Jurisdiction to reform written instruments. See Reformation of Instruments, § 6.

Jurisdiction over church controversies. See Religious Societies, § 2.

Implied power to issue writ of supersedeas. See Supersedeas, § 1.

### § 1. Jurisdiction Over Citizens of Another State or Country.

Process confined to limits of state. 6: 179.

Decoying party within jurisdiction. 6: 180.

Waiver of objection by foreign citizen. 6: 180.

Citizen of another state found within the state. 6: 181.

Property of nonresident located in state. 6: 181, 190.

Land situated in another state. 6: 182.

Service of process by publication. 6: 183.

Nonresident stockholder of corporation. 6: 184.

Executors and administrators. 6: 184.

Receivers, appointed in sister state. 6: 185.

Equity jurisdiction. 6: 189.

Alien enemies. 6: 190.

### § 2. Jurisdiction to Review Proceedings to Determine Election and Qualification of Legislators.

Members of the legislature. 16: 220.

Members of city councils. 16: 221-223.

**§ 3. Amount in Controversy.**

Method of determining. 21: 617-622.

**§ 4. Evidence Aliunde to Show Jurisdiction.**

Presumption in favor of jurisdiction of courts of record. 20: 521.

No presumption in favor of courts of limited jurisdiction. 20: 521.

Justice courts. 20: 521.

Orphans' court. 20: 522.

**§ 5. Concurrent and Conflicting Jurisdiction.**

In general. 29: 310-318.

**§ 6. Limitations on Doctrine of Stare Decisis.**

Basis of doctrine. 73: 98.

Matters within the protection of the doctrine. 73: 99.

— Reason, illustrations and references in opinions. 73: 99.

Perpetuation of legal error. 73: 101.

Force of single erroneous decision. 73: 103.

Force of decision by divided court. 73: 104.

Conclusion. 73: 105.

**§ 7. Rules of Court.**

Authority to promulgate. 41: 639.

Prescribing time to proceed. 41: 639.

Tending to exact good faith from litigants. 41: 640.

Regulation of mode of procedure. 41: 640.

Limitations on power to prescribe. 41: 641.

Effect of rules. 41: 643.

Construction of rules. 41: 645.

**§ 8. Filing Papers.**

What constitutes. 15: 294, 295.

Chattel mortgages. 15: 295.

Delivery to officer. 15: 296.

Bill of exceptions. 15: 297.

Return of judicial sale. 15: 297.

Proof of filing. 15: 297, 298.

**COVENANTS.**

NATURE AND DEFINITION, § 1.

RUNNING WITH THE LAND, § 2.

RESTRICTING USE OF LAND, § 3.

QUIET ENJOYMENT, § 4.

COVENANT OF SEISIN, § 5.

BREACH OF COVENANT OF SEISIN, § 6.

BREACH OF COVENANT OF WARRANTY BY EVICTION, § 7.

DAMAGES FOR BREACH OF COVENANT OF SEISIN, § 8.

DAMAGES FOR BREACH OF WARRANTY OF TITLE, § 9.

ACTION FOR BREACH OF COVENANT OF SEISIN, § 10.

Liability of grantee on covenants in deeds. See Deeds, § 18.

Enjoining breach of covenant. See Injunction, § 7.

For removal of lease. See Landlord and Tenant, § 11.

Against subletting. See Landlord and Tenant, § 18.

Not to sue. See Release, § 6.

**§ 1. Nature and Definition.**

Covenant of seisin. 125: 443.

**§ 2. Running With the Land.**

General principles. 82: 664.

Buildings and improvements. 82: 671.

Dams, flumes and levees. 82: 673.

Depots, stations, etc. 82: 673.

Easements and servitudes. 82: 674, 684.

Insurance. 82: 675.

Encumbrances. 82: 676.

Fencing. 82: 677.

Nuisance and particular businesses. 82: 679.

Payment of mortgage debt. 82: 679.

Party-walls. 82: 679.

Rent. 82: 681.

Repairs. 82: 681.

Use of property. 82: 682.

Taxes and assessments. 82: 683.

Water and ditches. 82: 684.

Creating charges. 82: 684.

Seisin and right to convey. 82: 684.

Warranty and quiet enjoyment. 82: 686.

Miscellaneous. 82: 690.

**§ 3. Restricting Use of Land.**

Right to make and enforce. 21: 485.

Effect of penalty of forfeiture for violation. 21: 485.

Enjoying breach. 21: 485.

Damages for breach. 21: 486.

Create negative easement. 21: 486.

Need not run with the land. 21: 487.

Mutual covenants. 21: 488.

Need not be written. 21: 489.

Must be intended for benefit of land retained. 21: 491.

Covenant not to build within certain distance from the street. 21: 494.

Covenant not to build on rear of lot. 21: 494.

Release of covenant. 21: 495.  
 Estoppel to enforce covenant. 21: 495, 496.  
 — Illustrations. 21: 497.  
 Effect of change in conditions. 21: 498.  
 Evidence of intent. 21: 498–507.

#### § 4. Quiet Enjoyment.

Implied in lease of land. 53: 113.  
 Scope and effect. 53: 114.  
 Breach of covenant in lease. 53: 115.  
 — Measure of damages for. 53: 116.  
 Runs with the land. 53: 118.  
 Breach of covenant in deed. 53: 118.  
 — Measure of damages for. 53: 120.

#### § 5. Covenant of Seisin.

Definition. 125: 443.  
 What satisfies. 125: 445.  
 Form in which expressed. 125: 446.  
 Implied in bargain and sale deed. 125: 446.  
 Synonymous with covenant of right to convey. 125: 446.

#### § 6. Breach of Covenant of Seisin.

Covenant is broken when made. 125: 447.  
 Covenant is personal. 125: 448.  
 Nonassignable on breach. 125: 449.  
 Statutory modification of rule. 125: 450.  
 What constitutes breach. 125: 451.  
 Existence of encumbrance. 125: 453.  
 Existence of dower right. 125: 453.  
 Existence of easement. 125: 454.  
 Misdescription of property. 125: 455.

#### § 7. Breach of Covenant of Warranty by Eviction.

Eviction necessary to breach. 122: 853.  
 Actual and constructive eviction. 122: 854.  
 Partial eviction. 122: 855.  
 Collusive eviction. 122: 855.  
 Eviction by legal process necessary. 122: 855.  
 Existence of outstanding title as eviction. 122: 856.  
 Recovery of judgment as eviction. 122: 857.  
 Purchase of outstanding title by grantee. 122: 858.  
 Adverse possession at time of conveyance. 122: 858.

Foreclosure of mortgage or lien. 122: 859.

Assignment of dower. 122: 860.  
 Existence of easement. 122: 860.

#### § 8. Damages for Breach of Covenant of Seisin.

General rule. 125: 457.  
 Nominal damages. 125: 461.  
 Partial breach. 125: 463.  
 When grantee buys outstanding title. 125: 464.

#### § 9. Damages for Breach of Warranty of Title.

In general. 24: 266.  
 In case of partial eviction. 24: 267.  
 Where grantee purchases outstanding title. 24: 267.  
 Interest and attorney's fees. 24: 268.  
 Recoverable by remote vendee. 24: 268.  
 In case of exchange of lands. 24: 268.

#### § 10. Action for Breach of Covenant of Seisin.

Who may sue. 125: 455.  
 Who liable. 125: 457.  
 Evidence. 125: 464.

### CRACKLOO.

As gambling device. See Gaming, § 5.

### CRAP GAME.

As gambling game. See Gaming, § 4.

### CREDIBILITY OF WITNESS.

Evidence admissible to impeach. See Evidence, § 14.

### CREDITORS.

Right to appeal. See Appeal and Error, § 2.  
 Assignment for benefit of. See Assignment for Benefit of Creditors, § 1.  
 Right to take advantage of statute of frauds. See Frauds, Statute of, § 9.  
 Of partnership. See Partnership, § 15.  
 Application of payments by. See Payments, § 6.  
 Duty to sureties. See Principal and Surety, § 4.  
 Right to contest will. See Wills, § 22.

### CREDITORS' SUITS.

Pendency of other proceedings as ground for abatement. See Abatement and Revival, § 1.

#### § 1. Demands Which will Support.

Exhausting legal remedy. 66: 271.  
 Remedy at law as bar. 66: 273.

Legal remedy need not always be exhausted. 66: 274.  
 Recovery of judgment prerequisite. 66: 276.  
 Return of execution unsatisfied. 66: 276.  
 Sufficiency of judgment. 66: 277.  
 — Foreign and federal judgment. 66: 278.  
 Sufficiency of execution. 66: 280.  
 Sufficiency of return of execution. 66: 281.  
 Time of return. 66: 282.  
 Collusive and fraudulent returns. 66: 283.  
 Essentials of return where judgment is joint. 66: 284.  
 Nonresidence, insolvency or death of debtor excuses exhaustion of legal remedies. 66: 284.  
 Fraudulent conveyances. 66: 286.  
 Equitable interest and property not subject to execution. 66: 287.  
 Attachment lien. 66: 288.  
 Essentials of debt sought to be collected. 66: 289.

### CREDIT RATINGS.

False statements to or by mercantile agencies. See Mercantile Agencies, § 1.

### CREDITS.

On insolvency of loan society. See Building and Loan Associations, § 1.

### CRIMINAL CONTEMPT.

What constitutes. See Contempt, § 1.

### CRIMINAL LAW.

- I. NATURE AND ELEMENTS OF CRIME AND DEFENSES, §§ 1-7.
- II. CAPACITY TO COMMIT AND RESPONSIBILITY FOR CRIME, §§ 8-11.
- III. PARTIES TO OFFENSES, §§ 12, 13.
- IV. VENUE, § 14.
- V. FORMER JEOPARDY, §§ 15-20.
- VI. EVIDENCE, §§ 21-40.
- VII. TIME OF TRIAL AND CONTINUANCE, §§ 41, 42.
- VIII. TRIAL, §§ 43-56.
- IX. NEW TRIAL, §§ 57-62.
- X. JUDGMENT, SENTENCE AND PUNISHMENT, §§ 63-66.

See, also, Arrest; Bail; Contempt; Convicts; Extradition; Grand Jury; Habeas Corpus; Jury; Witnesses.

The law defining and punishing particular crimes and the law of criminal procedure specially applicable to them will be found under the following titles: Adultery; Arson;

Assault and Battery; Bigamy; Burglary; Conspiracy; Embezzlement; Extortion; Fornication; Homicide; Incest; Malicious Mischief; Mayhem; Robbery; Seduction; Suicide; Vagrancy.  
 Offense of living in open and notorious adultery. See Adultery, § 1.  
 Right of accused to confront witnesses. See Constitutional Law, § 13.  
 Responsibility of corporations for crime. See Corporations, § 51.  
 Conduct of extradition proceedings. See Extradition, § 9.  
 Review of extradition proceedings. See Extradition, § 13.  
 Objecting to grand jury by plea in abatement. See Grand Jury, § 1.  
 Review of criminal proceedings on habeas corpus. See Habeas Corpus, § 6.  
 Review of judgment and sentence on habeas corpus. See Habeas Corpus, § 7.  
 Exposing public to disease. See Health, § 1.  
 Power of board of health to prescribe criminal penalties. See Health, § 2.  
 Crimes of wife committed in husband's presence. See Husband and Wife, § 22.  
 Enjoining crimes and criminal proceedings. See Injunction, § 6.  
 Liability of liquor seller for crimes of drunkard. See Intoxicating Liquors, § 2.  
 Imputation of crime as libel. See Libel and Slander, § 2.  
 Mandamus to control criminal proceedings. See Mandamus, § 6.  
 Police power of cities to punish crimes. See Municipal Corporations, § 6.  
 Criminal liability of public officer for neglect of duty. See Officers, § 15.  
 Criminal liability of principal for unauthorized acts of agent. See Principal and Agent, § 15.  
 Criminal responsibility of corporation for usury. See Usury, § 2.

### I. NATURE AND ELEMENTS OF CRIME AND DEFENSES.

ACTS WHICH MAY BE DECLARED CRIMINAL, § 1.  
 VALIDITY OF LAW IMPOSING HEAVIER PENALTY FOR SECOND OFFENSE, § 2.  
 OFFENSES CONTINUING THROUGHOUT ONE DAY, § 3.  
 ATTEMPT TO COMMIT CRIME, § 4.  
 MERGER OF OFFENSES, § 5.  
 COERCION AS DEFENSE, § 6.  
 EFFECT OF CONSENT OF INJURED PERSON, § 7.

#### § 1. Acts Which may be Declared Criminal.

In general. 78: 235.  
 Police power defined. 78: 236.  
 Power of legislature. 78: 238.  
 Due process of law. 78: 239.  
 Criminal intent. 78: 239.  
 Abandonment of children. 78: 240.  
 Animals running at large. 78: 240.  
 Building wooden structure in fire limits. 78: 240.

Burial and removal of the dead. 78: 241.  
 Carrier's failure to store goods in licensed warehouse. 78: 241.  
 Cheating and imposition. 78: 241.  
 Coal mining near land of another. 78: 242.  
 Compulsory vaccination. 78: 242.  
 Conspiracy injurious to trade. 78: 243.  
 Dairy products adulteration. 78: 243.  
 Employees' breach of contract. 78: 243.  
 Employer violating eight-hour law. 78: 244.  
 Failure of husband to provide. 78: 245.  
 Fish and game law violations. 78: 245.  
 Fraudulent banking. 78: 249.  
 Free speech guaranty. 78: 249.  
 Hawkers and peddlers. 78: 250.  
 Horseracing. 78: 250.  
 Insurance in violation of regulations. 78: 250.  
 Interstate commerce. 78: 251.  
 Intoxicating liquors. 78: 253.  
 Lotteries and gift enterprises. 78: 255.  
 Miscegenation. 78: 256.  
 Natural gas waste. 78: 256.  
 Nuisances. 78: 256.  
 Oleomargarine and imitation butter. 78: 257.  
 Opium sale or distribution. 78: 258.  
 Option sales. 78: 259.  
 Persuading sailors to desert. 78: 259.  
 Practice of medicine, surgery or midwifery. 78: 259.  
 Plumbers—Regulations. 78: 259.  
 Possession of injurious drugs. 78: 260.  
 Press, infringing liberty of. 78: 260.  
 Prison-made goods—Not marking. 78: 260.  
 Profanity and prostitution. 78: 261.  
 Pure food law violations. 78: 261.  
 Quarantine regulations. 78: 262.  
 Railway regulations. 78: 262.  
 Refusal to pay money. 78: 262.  
 Right to bear arms. 78: 262.  
 Removal of cotton in the seed. 78: 264.  
 Stealing wreckage from derelict. 78: 264.  
 Suicide. 78: 264.  
 Sunday law violations. 78: 264.  
 Ticket brokerage or scalping. 78: 266.  
 Trading stamps, prizes and gifts. 78: 267.  
 Trademark infringement. 78: 268.

Use of mails. 78: 268.  
 Miscellaneous. 78: 269-274.

## § 2. Validity of Law Imposing Heavier Penalty for Second Offense.

In general. 64: 378.  
 As ex post facto law. 64: 379.  
 Including prior convictions. 64: 380.  
 Twice in jeopardy for same offense. 64: 381.  
 Cruel and unusual punishments. 64: 382.  
 Equal protection of the laws. 64: 382.

## § 3. Offenses Continuing Throughout One Day.

English rule. 131: 815.  
 Violation of game laws. 131: 816.  
 Michigan saloon law. 131: 817.  
 Texas saloon law. 131: 817.  
 Texas theatrical law. 131: 817.  
 Sales of liquor. 131: 817.  
 Violation of Sunday laws. 131: 817.  
 What constitutes but one crime. 131: 817.  
 Offenses distinct in nature. 131: 817.

## § 4. Attempt to Commit Crime.

What constitutes an attempt. 20: 741.  
 Attempt implies more than mere intention. 20: 741.  
 Preparatory act is not an attempt. 20: 741.  
 Distinguished from complete offense. 20: 742, 743.  
 Solicitation as attempt. 20: 744.  
 Attempt to commit crime which could not be committed. 20: 744.  
 Attempt to bribe. 20: 745.  
 Attempt to fire gun. 20: 745.  
 Voluntary abandonment of attempt. 20: 745.  
 Conviction of attempt under indictment for completed offense. 20: 745.  
 Abettors of attempt. 20: 746.  
 Requisites of indictment for attempt. 20: 746.  
 Misdemeanor at common law. 20: 747.  
 Attempt to rape and assault with intent to commit rape distinguished. 20: 747.  
 Intent as element. 20: 747.  
 Punishment. 20: 747.  
 Attempt to commit suicide. 20: 748.

## § 5. Merger of Offenses.

General rule. 5: 899.  
 Conspiracy in felony. 5: 900.

Crimes of equal degree not merged. 5: 901.

### § 6. Coercion as Defense.

Character of crime. 106: 721.  
Extent of coercion. 106: 723.  
Time and place of expulsion. 106: 724.  
Husband and wife. 106: 725, 726.  
Parent and child. 106: 727.  
Master and servant. 106: 727.  
Commanding officer and soldier. 106: 727.

### § 7. Effect of Consent of Injured Person.

In general. 72: 700.  
Abortion. 72: 700.  
Decoy letters in violation of postal laws. 72: 701.  
Purchasing liquor in violation of law. 72: 702.  
To trap thief. 72: 702.  
Extortion and burglary. 72: 703.  
Right to entrap persons suspected of intending crimes. 72: 704.

## II. CAPACITY TO COMMIT AND RESPONSIBILITY FOR CRIME.

INSANITY AS DEFENSE, § 8.  
PERSONS SUBJECT TO INSANE DELUSIONS, § 9.  
KLEPTOMANIA, § 10.  
RESPONSIBILITY OF CORPORATIONS, § 11.

### § 8. Insanity as Defense.

Insanity as precluding trial of accused. 76: 83.  
As a complete defense. 76: 83.  
Time at which insanity must exist. 76: 85.  
Presumption that mental state continues. 76: 85.  
Test of accountability. 76: 85.  
Power to distinguish between right and wrong. 76: 87.  
Insane delusions. 76: 89.  
Irresistible impulse and moral insanity. 76: 90.  
Drunkenness. 76: 91.  
Burden of proving sanity or insanity. 76: 92.

### § 9. Persons Subject to Insane Delusions.

Moral insanity, uncontrollable impulse. 63: 100.  
Mode of determining responsibility. 63: 104.

Index-Digest—7

Delusions justifying commission of crime. 63: 105.  
Presumptions and burden of proof. 63: 106.

### § 10. Kleptomania.

Definition. 89: 386.  
As defense. 89: 386.  
Evidence to establish. 89: 388.

§ 11. Responsibility of Corporations.  
Criminal responsibility of corporations. 133: 775-779.

## III. PARTIES TO OFFENSES.

WHO ARE ACCOMPLICES, § 12.  
SAME, § 13.

### § 12. Who are Accomplices.

In general. 138: 273, 274.  
Principals or accessories. 138: 274.  
Persons feigning crime to detect others. 138: 275.  
Persons coerced into committing crime. 138: 276.  
Persons having belief or knowledge of crime. 138: 276.  
Persons concealing crime. 138: 277.  
Persons morally guilty. 138: 277.  
Abortion. 138: 277.  
Adultery and fornication. 138: 278.  
Bribery. 138: 278.  
Compounding crime. 138: 278.  
Burglary and robbery. 138: 279.  
Escape and rescue. 138: 280.  
Gambling. 138: 281.  
Incest. 138: 281.  
Larceny and receiving stolen goods. 138: 282.  
Perjury. 138: 283.  
Rape. 138: 284.  
Sale of liquor. 138: 284.  
Seduction. 138: 284.  
Sodomy. 138: 285.

### § 13. Same.

In general. 98: 158.  
Persons acting involuntarily. 98: 158.  
Feigned accomplices, informers and detectives. 98: 160.  
Evidence. 98: 161.  
Questions for court and jury. 98: 161.

## IV. VENUE.

### § 14. Place Where Crime is Committed.

Common-law rule. 44: 79.  
American rule. 44: 79.

Accessories in one state to felony committed in another. 44: 82.  
 Larceny. 44: 82.  
 Abortion, forgery and embezzlement. 44: 83.  
 Obtaining money under false pretenses. 44: 83.  
 Offenses against United States mails. 44: 83.  
 Crimes committed on boundary rivers. 44: 84.

## V. FORMER JEOPARDY.

RULE AGAINST DOUBLE JEOPARDY FOR SAME OFFENSE, § 15.  
 WHEN JEOPARDY COMMENCES, § 16.  
 IDENTITY OF DEFENDANTS, § 17.  
 IDENTITY OF OFFENSES, § 18.  
 IDENTITY OF SOVEREIGNS OR LAWS OFFENDED, § 19.  
 WAIVER OR ESTOPPEL TO PLEAD, § 20.

### § 15. Rule Against Double Jeopardy for Same Offense.

Origin. 92: 93.  
 Plea of autrefois attain. 92: 93.  
 To what class of offenses the rule applies. 92: 104.

### § 16. When Jeopardy Commences.

After final determination of case. 48: 213.  
 After verdict. 48: 213.  
 After jury is sworn. 48: 214.  
 Effect of statute giving state right to appeal. 48: 214.  
 Rule in federal courts. 48: 215.

### § 17. Identity of Defendants.

General rule. 92: 94.  
 Prior acquittal of codefendant. 92: 95.  
 Prosecution severally after acquittal jointly. 92: 95.

### § 18. Identity of Offenses.

Must be for same act and offense. 92: 104.  
 Tests of identity—Usual test. 92: 105.  
 — Same transaction test. 92: 108.  
 — Gravamen test. 92: 109.  
 Lesser offense included in greater. 92: 109.  
 Greater offense barred by prosecution of lesser. 92: 111–114.  
 — Doctrine of merger of offenses. 92: 112.  
 Acquittal for variance. 92: 114.  
 Carving or splitting offenses. 92: 117.

— Assault or killing of several persons. 92: 120.  
 — Uttering several forged instruments. 92: 122.  
 Conclusiveness of test of identity. 92: 123.  
 Difference between prior conviction and acquittal. 92: 129.  
 Specific offenses in general. 92: 131.  
 Prosecution as accessory and principal. 92: 132.  
 Prosecution for attempt and for completed crime. 92: 132.  
 Prosecution for conspiracy and completed crime. 92: 133.  
 Prosecution for several acts pursuant to conspiracy. 92: 134.  
 Continuing offenses. 92: 135.  
 Assaults coupled with other offenses. 92: 138.  
 Homicide in various degrees. 92: 144.  
 Homicide and other offenses. 92: 145.  
 Adultery, bigamy, seduction and lewdness. 92: 146.  
 Arson. 92: 147.  
 Forgery, uttering and other offenses. 92: 148.  
 — Different forgeries. 92: 149.  
 Larceny in various degrees. 92: 149.  
 Larceny coupled with other offenses. 92: 150.  
 Several sales of liquor. 92: 155.  
 Sale of liquor coupled with other offenses. 92: 155.  
 Gambling and keeping gambling-house. 92: 158.  
 Miscellaneous. 92: 158.

### § 19. Identity of Sovereigns or Laws Offended.

United States and state. 92: 95.  
 United States and territory. 92: 96.  
 Federal court-martial and state court. 92: 98.  
 Different states. 92: 98.  
 Different counties of same state. 92: 99.  
 State law and city ordinance. 92: 100.  
 Federal court and court-martial. 92: 103.  
 Contempt, punishment and criminal prosecution. 92: 103.

### § 20. Waiver or Estoppel to Plead.

General principles. 135: 70.  
 Before verdict by failure to object to prejudicial steps during the trial, obtaining dismissal of case or discharge of jury, by ac-



quittal on technical grounds or voluntary absence during trial. 135: 71-74.

After verdict by failure to have verdict corrected, motion in arrest or for new trial, taking appeal and serving sentence pending appeal. 135: 74-76.

Limitation of waiver in case of new trial. 135: 77.

By failure to interpose plea at proper time. 135: 79.

## VI. EVIDENCE.

PRESUMPTIONS AND BURDEN OF PROOF, § 21.

VALIDITY OF STATUTE CREATING PRESUMPTIONS, § 22.

MANNER OF OBTAINING EVIDENCE AS AFFECTING ITS ADMISSIBILITY, § 23.

EVIDENCE OF OTHER OFFENSES, § 24.

OTHER OFFENSES TO SHOW MOTIVE, § 25.

OTHER OFFENSES TO SHOW INTENT, § 26.

GOOD CHARACTER OF ACCUSED, § 27.

POSSESSION OF STOLEN PROPERTY, § 28.

CONFESSIONS OF ACCUSED, § 29.

CONFESSIONS UNDER OATH, § 30.

CONFESSIONS OR ADMISSIONS OF THIRD PERSONS, § 31.

TESTIMONY OF ACCOMPLICE IN PARTICULAR PROSECUTIONS, § 32.

NECESSITY FOR CORROBORATION OF ACCOMPLICE, § 33.

COMPETENCY AND SUFFICIENCY OF EVIDENCE TO CORROBORATE ACCOMPLICE, § 34.

STATE'S EVIDENCE, § 35.

TESTIMONY OF ABSENT OR DECEASED WITNESS GIVEN IN FORMER PROCEEDING, § 36.

COMPELLING ACCUSED TO PERFORM ACTS OR SUBMIT TO PHYSICAL EXAMINATION, § 37.

CIRCUMSTANTIAL EVIDENCE, § 38.

PHOTOGRAPHS AS EVIDENCE, § 39.

EXPERIMENTS AS EVIDENCE, § 40.

See, also, Burglary, § 6; Conspiracy, § 5; Forgery, § 4; Homicide, §§ 13-22.

### § 21. Presumptions and Burden of Proof.

Presumption that sanity or insanity continues. 76: 85.

Burden of proving sanity or insanity. 76: 92-97.

### § 22. Validity of Statutes Creating Presumptions.

In general. 36: 685.

In prosecutions for sale of liquor. 36: 684.

In prosecutions for gambling. 36: 685.

### § 23. Manner of Obtaining Evidence as Affecting Its Admissibility.

By search and seizure. 94: 345.

By requiring some positive act of accused. 94: 346.

### § 24. Evidence of Other Offenses.

General rule and its exceptions. 105: 977.

Necessity for relevancy or logical connection. 105: 980.

Other offenses as essential element of crime charged. 105: 982.

Other offense as part of *res gestae*. 105: 984.

Other offense to show identity of person on trial. 105: 984.

Conviction of other offense to impeach or affect credibility of witness. 105: 1005.

Conviction or acquittal of other offense as substantive evidence. 105: 1006.

### § 25. Other Offense to Show Motive.

Distinction between motive and intent. 105: 986.

To show likelihood of motive. 105: 987.

Malice as motive. 105: 989.

Single motive prompting commission of several crimes. 105: 990.

Concealment of crime or evidence as motive. 105: 990.

Resistance to arrest as motive. 105: 991.

### § 26. Other Offenses to Show Intent.

Establishment of intent. 105: 991.

To corroborate or explain intent or characterize act. 105: 963.

Where intent is deducible from act itself. 105: 994.

Where innocent intent may be deduced from act where act itself constitutes crime regardless of intent. 105: 998.

Where defendant admits intent if his connection with the act be proved. 105: 998.

Where intent may be shown otherwise than by evidence of other offenses. 105: 1005.

### § 27. Good Character of Accused.

Admissibility in general. 103: 891.

To strengthen presumption of innocence. 103: 892.

To create reasonable doubt. 103: 892.  
 Right of state to rebut effect of evidence of. 103: 893.  
 Kind of evidence admissible. 103: 894.  
 Period to which it must relate. 103: 896.  
 Must relate to trait at issue. 103: 897.  
 Homicide and deadly assault. 103: 897.  
 Rape and sodomy. 103: 899.  
 Criminal libel. 103: 900.  
 Larceny and robbery. 103: 901.  
 Obtaining money under false pretenses. 103: 902.  
 Arson. 102: 902.  
 Perjury. 102: 902.  
 Counterfeiting. 102: 903.  
 Violation of election and liquor laws. 103: 903.  
 Carrying concealed weapons. 103: 904.  
 How the evidence should be considered. 103: 904.  
 Weight and effect of evidence. 103: 905.  
 — Where intent must be shown. 103: 906.  
 — Where state's evidence is circumstantial. 103: 907.  
 — Where reasonable doubt exists. 103: 908.  
 — Where quiet is reasonably proved. 103: 909.

### § 28. Possession of Stolen Property.

Application of doctrine to larceny and burglary. 101: 482.  
 Application to robbery and receiving stolen goods. 101: 484.  
 Effect of possession as evidence of guilt. 101: 485.  
 Nature and conclusiveness of presumption. 101: 499.  
 What constitutes possession. 101: 505.  
 Identification of property. 101: 506.  
 — Money. 101: 506.  
 Possession must be recent. 101: 510.  
 Possession must be exclusive. 101: 513.  
 Possession of only part of stolen property. 101: 518.  
 Possession by codefendant or associate. 101: 520.  
 Explanation of possession—What constitutes. 101: 520.  
 — Showing wrongful or dishonest possession. 101: 522.

— Raising reasonable doubt. 101: 522.

— Effect of false explanation. 101: 523.

Province of court and jury. 101: 523.

### § 29. Confessions of Accused.

Admissibility in general. 6: 242, 245; 19: 814; 73: 943.

To officer having custody of accused. 6: 243.

By person illegally imprisoned. 6: 244.

Province of court to determine admissibility. 6: 244.

Burden of proving voluntary character. 6: 244.

Inducement by person in authority. 6: 246.

Collateral inducement. 6: 247.

Induced by duress or appeal to religious or moral sentiments. 6: 248.

Induced by artifice or made while intoxicated or asleep. 6: 249.

Facts ascertained through inadmissible confession. 6: 250.

Proof and effect of confession. 6: 251.

Necessity for proof of corpus delicti. 6: 251.

### § 30. Confessions Under Oath.

Admissibility in general. 41: 522.

Statements made at coroner's inquest. 41: 523.

Statements before committing magistrate. 41: 523.

— Plea of guilty. 41: 523.

Testimony at former trial. 41: 523, 524.

Involuntary confessions. 41: 524.

### § 31. Confessions or Admissions of Third Persons.

General rule as to admissibility. 131: 778.

When they are a part of the res gestae. 131: 786.

When offered in connection with other incriminating evidence. 131: 786.

When offered as dying declarations. 131: 788.

When offered to discredit declarant. 131: 789.

### § 32. Testimony of Accomplice in Particular Prosecutions.

In general. 98: 172.

Burglary and robbery. 98: 172.

Larceny and receiving stolen goods. 98: 173.  
 Escape and rescue. 98: 174.  
 Gambling. 98: 175.  
 Forgery and uttering. 98: 175.  
 Perjury and subornation. 98: 175.  
 Bribery and compounding crime. 98: 176.  
 Sale of liquor. 98: 177.  
 Murder. 98: 177.  
 Rape. 98: 177.  
 Sodomy. 98: 178.  
 Incest. 98: 178.  
 Adultery. 98: 179.  
 Abortion. 98: 179.  
 Fornication. 98: 179.  
 Seduction. 98: 179.

**§ 33. Necessity for Corroboration of Accomplice.**

In general. 98: 161.  
 Advising and instructing jury. 98: 162.

**§ 34. Competency and Sufficiency of Evidence to Corroborate Accomplice.**

In general. 98: 165.  
 Evidence connecting defendant with crime. 98: 167.  
 Circumstantial evidence. 98: 170.  
 Confessions, admissions and declarations. 98: 170.  
 Testimony of other accomplice. 98: 171.  
 Wife of accomplice. 98: 171.  
 Questions for court and jury. 98: 171.

**§ 35. State's Evidence.**

Validity of agreements concerning. 40: 767.  
 Power of prosecuting attorney to agree not to prosecute. 40: 768.  
 Right to interpose agreement in defense to prosecution in violation of it. 40: 769-775.  
 Effect of agreement on privileges of witness. 40: 775.

**§ 36. Testimony of Absent or Deceased Witness Given in Former Proceeding.**

Mere absence insufficient. 61: 886.  
 Illness of witness. 61: 887.  
 Absence from state. 61: 887.  
 Constitutional provisions. 61: 888.  
 Deceased witness. 61: 888.

**§ 37. Compelling Accused to Perform Acts or Submit to Physical Examination.**

Identification of accused in general. 94: 336.  
 Standing in court. 94: 337.  
 Covering or uncovering face or head. 94: 338.  
 Other exhibitions. 94: 339.  
 Repeating words. 94: 341.  
 Comparing footprints. 94: 342.  
 Making footprints. 94: 343.  
 Examination by expert alienists when defense of insanity is interposed. 94: 344.  
 Compelling accused to write in prosecution for forgery. 94: 344.  
 Physical examination of accused as making him testify against himself. 68: 251.

**§ 38. Circumstantial Evidence.**

Necessity for. 97: 772.  
 Definition, advantages and disadvantages. 97: 773.  
 Sufficient to convict. 97: 774.  
 Relative value of circumstantial and direct evidence. 97: 774.  
 Must include every reasonable hypothesis of guilt. 97: 776.  
 Degree of proof required of each circumstance. 97: 779.  
 What circumstances may be proved. 97: 782.  
 What may be proved by circumstantial evidence. 97: 784.  
 — Venue. 97: 785.  
 — Corpus delicti. 97: 785.  
 — Corroboration. 97: 788.  
 Circumstantial evidence as secondary evidence. 97: 788.  
 Admissibility of evidence that accused was trailed by bloodhounds. 82: 575.

**§ 39. Photographs as Evidence.**

Scene of crime. 75: 477.  
 Identification of deceased person. 75: 478.  
 Identification of accused. 75: 479.  
 Physical condition of assaulted person. 75: 479.  
 To connect accused with the crime. 75: 479.

**§ 40. Experiments as Evidence.**

General rule. 53: 375.  
 Illustrations. 53: 382.  
 Discretion of court. 53: 384.

## VII. TIME OF TRIAL AND CONTINUANCE.

RIGHT TO SPEEDY TRIAL, § 41.  
ABSENCE OF WITNESSES AS GROUND FOR CONTINUANCE, § 42.

### § 41. Right to Speedy Trial.

Constitutional provisions. 85: 188.

Definitions. 85: 188.

Statutory provisions. 85: 189.

— Enumerating grounds of delay. 85: 191.

Excusable delays—Illness of judge or prosecutor. 85: 192.

— Quashing and finding new indictment. 85: 192.

— Continuances. 85: 192.

— Disagreement or discharge of jury. 85: 194.

— Caused or assented to by accused. 85: 195.

— Change of venue. 85: 196.

Inexcusable delays entitling accused to discharge. 85: 196.

Waiver of right to be discharged. 85: 197.

Proceedings to secure or oppose discharge. 85: 198.

— Demand for trial. 85: 198.

Computation of time for trial. 85: 199.

— Terms of court. 85: 199, 200.

— Time while imprisoned under other indictments for same offense. 85: 200.

— Time pending appeal or motion for new trial. 85: 201.

Effect of defendant's discharge for delay. 85: 201.

Remedies for denial of speedy trial—Motion for dismissal. 85: 202.

— Appeal or writ of error. 85: 202.

— Habeas corpus. 85: 202.

### § 42. Absence of Witnesses as Ground for Continuance.

General principles controlling. 122: 745.

Discretion of court. 122: 746.

What application must show—Competency and materiality of expected testimony. 122: 746.

— Cumulative, corroborative and impeaching evidence. 122: 749.

— Credibility and effect of expected evidence. 122: 751.

— Probability of securing desired testimony. 122: 752.

— Diligence in procuring testimony. 122: 754.

Second or further continuance. 122: 757.

Admissions to prevent continuance. 122: 757-759.

## VIII. TRIAL.

See, also, Burglary, § 7; Conspiracy, § 6.

PUBLIC TRIAL, § 43.

ABSENCE OF JUDGE, § 44.

LIMITATIONS ON ARGUMENT, § 45.

ARGUMENT OF PROSECUTOR, § 46.

MISCONDUCT IN ARGUMENT CONSTITUTING REVERSIBLE ERROR, § 47.

MISTRIAL FOR DEMONSTRATIONS OR REMARKS OF SPECTATORS, § 48.

URGING OR COERCING VERDICT, § 49.

PROVINCE OF JURY, § 50.

INSTRUCTIONS—ON CIRCUMSTANTIAL EVIDENCE, § 51.

— ON REASONABLE DOUBT, § 52.

— INVASION OF PROVINCE OF JURY, § 53.

CONDUCT AND DELIBERATIONS OF JURY, § 54.

— EFFECT OF SEPARATION OF JURY, § 55.

QUOTIENT VERDICT, § 56.

### § 43. Public Trial.

Right of accused to public trial. 28: 308.

What constitutes public trial. 28: 308.

What constitutes infringement of right. 28: 309.

### § 44. Absence of Judge.

In general. 122: 721.

During argument. 122: 726.

When verdict is returned. 122: 726.

When view is taken. 122: 727.

Leaving someone else to preside. 122: 727.

Absence of one of several judges. 122: 728.

### § 45. Limitations on Argument.

In general. 46: 23.

Reasonable limitations. 46: 26.

Unreasonable limitations. 46: 27.

### § 46. Argument of Prosecutor.

Duty of fairness toward accused. 121: 806, 807.

Discretion of court as to latitude of argument. 121: 808.

Duty of court to curb counsel. 121: 808, 809.

Comment on refusal to testify. 121: 809-812.

**§ 47. Misconduct in Argument Constituting Reversible Error.**

Assuming facts not in evidence. 9: 559.

— Illustrations. 9: 560.

Comment on evidence as incompetent or illegal. 9: 565.

Personal abuse of accused, witnesses or jurors. 9: 565.

Language tending to humiliate or degrade accused. 9: 565.

Comment on failure of accused to testify. 9: 567.

Comment on former conviction. 9: 567.

Comment on change of venue. 9: 568.

Appeals to passion or prejudice. 9: 568.

Telling jury that wrongful conviction would be reversed on appeal. 9: 569.

Method of curing error in argument. 9: 569.

Opening statement to jury. 9: 570.

**§ 48. Mistrial for Demonstrations or Remarks of Spectators.**

Applause, laughter or hisses. 121: 511.

Improper remarks. 121: 514.

Display of emotion. 121: 515.

**§ 49. Urging or Coercing Verdict.**

Right to urge jury to agree. 105: 569-571.

Telling jurors they must agree. 105: 574.

Reflection on honesty or integrity of jurors. 105: 575.

Threat to keep jury for extended time. 105: 576.

Threat of personal inconvenience. 105: 579.

**§ 50. Province of Jury.**

Jury as judges of law and fact. 42: 291-295.

**§ 51. Instructions—On Circumstantial Evidence.**

Duty to instruct. 97: 789.

Where evidence is not wholly circumstantial. 97: 790.

Where proof is direct. 97: 793.

Instructions not required by the evidence. 97: 793.

Form of instructions. 97: 793.

Wording of charge. 97: 794.

On exclusion of every other reasonable hypothesis but guilt. 97: 794.

On proof of each circumstance. 97: 796.

Instructions properly refused. 97: 797, 798.

On weight of circumstantial evidence. 97: 799.

**§ 52. — On Reasonable Doubt.**

Definition of reasonable doubt. 48: 566, 569, 570.

Application of doctrine of reasonable doubt. 48: 568.

Doubt must be actual and substantial. 48: 569.

Good and bad instructions. 48: 571, 572.

Misleading instructions. 48: 573.

Conscientious belief. 48: 573.

Entire satisfaction. 48: 573.

Circumstantial evidence. 48: 574.

Reason for doubt. 48: 574.

"Hesitate and pause," "matters of highest importance." 48: 575.

Probable doubt, possibility or probability of innocence. 48: 577.

**§ 53. Invasion of Province of Jury.**

Instructions on matters of fact. 14: 36, 37.

Remarks of court showing bias or sympathy. 14: 38.

Warning jury as to character of defense. 14: 41.

— Defense of alibi. 14: 42-44.

Assuming facts. 14: 44.

Charge as to credibility of witnesses or weight of evidence. 14: 45.

Discussing evidence sneeringly or in any manner tending to discredit it. 14: 47.

**§ 54. Conduct and Deliberations of Jury.**

Right of jurors to discuss and argue among themselves. 134: 1059.

Withdrawal of juror and its effect. 78: 781.

Discharge of jury based on report of illness of juror communicated to court by telephone. 127: 556.

**§ 55. — Effect of Separation of Jury.**

Before completion or swearing of panel. 108: 158.

Before introduction of evidence. 103: 159.  
 During progress of trial. 103: 159-161.  
 After submission of cause. 103: 161.  
 After finding of verdict. 103: 162.  
 Presumption and burden of proof. 103: 164.  
 — Rebuttal. 103: 165.  
 Consent or objection of parties. 103: 165.  
 Admonition by court. 103: 166.  
 Custody of officer. 103: 166.  
 Discharge and acquittal of accused. 103: 167.  
 Technical and unimportant separations. 103: 167.  
 In case of personal necessity or convenience. 103: 168.  
 In taking meals. 103: 169.  
 In retiring to rest or sleep. 103: 169.  
 Sickness of juror. 103: 170.  
 Juror testifying in another case. 103: 170.  
 During a fire. 103: 170.

#### § 56. Quotient Verdict.

Quotient or chance verdict invalid. 134: 1061.

### IX. NEW TRIAL.

GROUND IN GENERAL, § 57.  
 MISCONDUCT OF JURY OTHER THAN SEPARATION, § 58.  
 MISCONDUCT OF JURY IN RECEIVING EVIDENCE OUT OF COURT, § 59.  
 USE OF INTOXICANTS BY JURY, § 60.  
 IMPROPER DEMONSTRATIONS OR REMARKS OF SPECTATORS, § 61.  
 GRANT OF NEW TRIAL AS SUBJECTING DEFENDANT TO CONVICTION FOR HIGHER OFFENSE, § 62.

#### § 57. Grounds in General.

New trial for statements by jurors influencing verdict. 134: 1053.  
 Experiments by jurors as ground for new trial. 134: 1060.  
 New trial for chance or quotient verdict. 134: 1061, 1062.

#### § 58. Misconduct of Jury Other Than Separation.

Use of intoxicants—In general. 134: 1034.  
 During progress of trial. 134: 1037.  
 — After cause is submitted. 134: 1039.  
 Conversing with witnesses. 134: 1045.  
 Conversing with counsel or judge. 134: 1046.

Communicating with court officers. 134: 1047.  
 Receiving evidence out of court. 134: 1050.  
 Deliberations. 134: 1059.  
 Discussions and arguments. 134: 1059.  
 Experiments. 134: 1060.  
 Manner of arriving at verdict. 134: 1061.

#### § 59. Misconduct of Jury in Receiving Evidence Out of Court.

In general. 134: 1050.  
 Unauthorized view or inspection. 134: 1051.  
 Demonstrative evidence. 134: 1052.  
 Statements of jurors. 134: 1054.  
 — After verdict is agreed upon. 134: 1055.  
 Access to or reading newspapers. 134: 1056.  
 Receiving mail. 134: 1057.  
 Access to or reading law books. 134: 1058.

#### § 60. Use of Intoxicants by Jury.

In general. 134: 1034.  
 During progress of trial. 134: 1037.  
 After cause is submitted. 134: 1039.  
 Burden of showing effect of liquor. 134: 1040.

#### § 61. Improper Demonstrations or Remarks of Spectators.

Applause, laughter and hisses. 121: 511.  
 Remarks from the gallery. 121: 514.  
 Display of emotion. 121: 515.

#### § 62. Grant of New Trial as Subjecting Defendant to Conviction for Higher Offense.

Decisions holding accused not triable for higher offense. 4: 117.  
 Contrary doctrine. 4: 118.  
 Statutory provisions. 4: 119.  
 Where indictment contains several counts. 4: 119.

### X. JUDGMENT, SENTENCE AND PUNISHMENT.

RES ADJUDICATA IN CRIMINAL PROCEEDINGS, § 63.  
 VALIDITY OF SENTENCE NOT AUTHORIZED BY LAW, § 64.  
 POSTPONING SENTENCE, § 65.  
 PUNISHMENT OF CORPORATIONS, § 66.

**§ 63. Res Adjudicata in Criminal Proceedings.**

Note includes only cases where judgment is attempted to be used as conclusive proof of facts upon which it was rendered and excludes former jeopardy. 103: 20.

Distinction between criminal and civil cases. 103: 20.

General rule. 103: 21.

Reason for the rule. 103: 23.

Application of the rule. 103: 23.

Incidental or collateral issues. 103: 24.

Where similar issues were involved. 103: 25-27.

Conviction or acquittal of one codefendant. 103: 28.

Recital of grounds for divorce in decree. 103: 28.

Acquittal or conviction as affecting subsequent charge of perjury. 103: 29.

**§ 64. Validity of Sentence not Authorized by Law.**

Below the minimum. 55: 264.

Above the maximum. 55: 267.

**§ 65. Postponing Sentence.**

Authority to indefinitely postpone. 132: 644.

**§ 66. Punishment of Corporations.**

Mode of punishing corporation for crime. 133: 779.

**CROPS.**

DEFINED, § 1.

PASSING BY DEED, DEVISE OR DESCENT OF LAND, § 2.

DAMAGES FOR INJURING GROWING CROPS, § 3.

Injuries to crops from blasting on adjoining lands. See Adjoining Land Owners, § 3.

Chattel mortgage of growing crops. See Chattel Mortgages, § 6.

Description of growing crops in chattel mortgage. See Chattel Mortgages, § 3.

Exemption of crops grown on homestead. See Homestead, § 2.

Enjoining removal or injury to. See Injunction, § 4.

Croppers and cropping contracts. See Landlord and Tenant, § 32.

Right of landlord to reserve title to or lien on. See Landlord and Tenant, § 31.

Injuries to trees. See Woods and Forests.

**§ 1. Defined.**

Definitions. 131: 617.

**§ 2. Passing by Deed, Devise or Descent of Land.**

Effect of alienation of land on which crops are grown. 131: 619.

Reservation of growing crops. 131: 621.

Execution and foreclosure of cropped lands. 131: 622.

Devolution on death of owner. 131: 622.

**§ 3. Damages for Injuring Growing Crops.**

Market value of crops or land. 140: 310.

Rental value of land. 140: 311.

Value of crop at time of destruction. 140: 314.

— With interest. 140: 315.

Partial destruction. 140: 316.

Injury to land and crops. 140: 317.

Injury to orchard. 140: 318.

Pleading damages. 140: 319.

Evidence—Of market value. 140: 320.

— Of rental value. 140: 321.

— Of value at time of destruction. 140: 321.

— Partial destruction. 140: 326.

— Injury to land and crop. 140: 326.

— Injury to orchards. 140: 327.

Instruction. 140: 328.

**CROSS-EXAMINATION.**

Of witnesses on collateral matters. See Witnesses, § 10.

Of accused at criminal trial. See Witnesses, § 11.

**CROSSING SIGNALS.**

Frightening animals by noisy crossing signals. See Railroads, § 10.

**CROSS-LODES.**

Following cross-loads of mineral veins. See Mines and Minerals, § 5.

Crossing, intersecting and uniting veins included in mineral patent. See Mines and Minerals, § 6.

**CRUEL AND UNUSUAL PUNISHMENT.**

For crime. See Criminal Law, § 2.

**CRUELTY.**

Divorce for. See Divorce, § 4.

**CRUELTY TO ANIMALS.**

Killing or injuring dogs. See Animals, § 2.

Proximate cause of injuries to animals. See Animals, § 10.

**CURRENTS OF ELECTRICITY.**

**Duty to guard public from injury from. See Electricity, § 1.**

**CURTESY.**

**DEFINITION AND CLASSIFICATION, § 1.**  
**NATURE, ORIGIN AND ABOLITION OF ESTATE, § 2.**

**REQUISITES, § 3.**

**STATUTORY REGULATION, § 4.**

**CREATION OF ESTATE, § 5.**

**ESTATES SUBJECT TO CURTESY, § 6.**

**MARRIAGE AND BIRTH OF ISSUE, § 7.**

**SEISIN OF WIFE, § 8.**

**EXTENT OF RIGHTS OF HUSBAND AND HIS CREDITORS, § 9.**

**OBLIGATIONS OF TENANT, § 10.**

**ALIENATION, WAIVER OR FORFEITURE, § 11.**

**See, also, Dower; Husband and Wife.**

**§ 1. Definition and Classification.**

Definition. 128: 474; 112: 572.

Classification. 128: 475.

**§ 2. Nature, Origin and Abolition of Estate.**

Definition. 112: 572.

Origin and general characteristics. 112: 572.

Distinction between initiate and consummate. 112: 574.

Distinguished from estate jure uxoris. 112: 575.

Distinguished from dower. 112: 576.

Power of legislature to abolish. 112: 595.

**§ 3. Requisites.**

Classification of. 128: 475.

Marriage. 128: 475.

Seisin of wife. 128: 476.

Birth of issue alive and capable of inheriting—Time of birth. 128: 478.

— What amounts to. 128: 479.

— Adoption of child. 128: 480.

Death of mother. 128: 480.

Continuance of marriage—Effect of divorce. 128: 481.

**§ 4. Statutory Regulation.**

Creation by statute. 128: 487.

Abolition by statute. 128: 488.

**§ 5. Creation of Estate.**

How avoided. 128: 490.

**§ 6. Estates Subject to Curtesy.**

General rule. 128: 482.

Source of title. 128: 482.

Life estates. 128: 482.

Estates for years. 128: 483.

Equitable estates. 128: 483.

Conditional estates. 128: 484.

Estates not in possession. 128: 485.

Title held in trust. 128: 486.

Proceeds of sales and leases. 128: 486.

**§ 7. Marriage and Birth of Issue.**

Necessity for valid marriage. 112: 577.

Effect of divorce. 112: 577.

Necessity for birth of issue capable of inheriting. 112: 578.

What constitutes birth of issue alive. 112: 579.

**§ 8. Seisin of Wife.**

Necessity and character. 112: 579.

Rule determining whether curtesy attaches. 112: 582.

Estates subject to—In general. 112: 583.

— Equitable estates in trust. 112: 583.

— Trust estate created by husband. 112: 585.

— Trust or conveyance expressly excluding husband. 112: 586–588.

— Conditional estates, estates tail and estates subject to disposition by wife. 112: 588.

— Remainders and reversions. 112: 589.

— Leases and life estates. 112: 590.

— Coparceners, joint and common tenancy. 112: 591.

— Pre-emption or redemption rights. 112: 591.

**§ 9. Extent of Rights of Husband and His Creditors.**

Rights of tenant by curtesy. 112: 593.

Liability of estate for debts. 112: 594.

Right of tenant to partition. 112: 595.

**§ 10. Obligations of Tenant.**

Liability of tenant for taxes and assessments. 114: 450.

**§ 11. Alienation, Waiver or Forfeiture.**

Conveyance in nature of alienation. 112: 592.

Separation agreements. 112: 592.

Waiver in general. 112: 592.



— By taking under will in lieu of  
 courtesy. 112: 593.  
 Forfeiture by misconduct. 112: 593.

### CURTILAGE.

What constitutes. See Burglary, § 1.

### CUSTODY OF CHILDREN.

Custody of ward. See Guardian and Ward,  
 § 4.

Right to custody and proceedings to enforce  
 it. See Parent and Child, § 1.

### CUSTODY OF LAW.

Right to replevin property in custody of law.  
 See Replevin, § 2.

### CUSTOMS AND USAGES.

Judicial notice of. See Evidence, § 1.  
 Custom cannot give right to deposit debris.  
 See Mines and Minerals, § 20.

### CUTTING TREES.

See Woods and Forests.

### CY PRES.

Doctrine of. See Charities, § 2.

### DAMAGES.

LAW GOVERNING DAMAGES FOR TORT,  
 § 1.

LAW GOVERNING DAMAGES FOR  
 BREACH OF CONTRACT, § 2.

LAW GOVERNING INTEREST AS DAM-  
 AGES, § 3.

DESTRUCTION OF PROPERTY HAVING  
 NO MARKET VALUE, § 4.

FOR FRAUDULENT REPRESENTATIONS  
 INDUCING SALE OR EXCHANGE OF  
 LAND, § 5.

MENTAL ANGUISH AS ELEMENT, § 6.

FRIGHT AS ELEMENT, § 7.

ATTORNEY'S FEES AS DAMAGES, § 8.

EXEMPLARY OR PUNITIVE, § 9.

SAME, § 10.

DUTY TO LESSEN, § 11.

ADMISSIBILITY OF EVIDENCE OF  
 FAMILY TIES AND OBLIGATIONS  
 OF PLAINTIFF, § 12.

LIQUIDATED DAMAGES OR PENALTY,  
 § 13.

CHARACTER AND FORM OF CONTRACT  
 LIQUIDATING DAMAGES, § 14.

CONSTRUCTION OF CONTRACT LIQUI-  
 DATING DAMAGES, § 15.

For removal of lateral support from adjoining  
 land. See Adjoining Land Owners, § 1.

For wrongful or malicious attachment. See  
 Attachment, § 7.

For delay in shipment of freight. See Car-  
 riers, § 13.

For loss, injury or delay in transportation of  
 baggage. See Carriers, § 64.

For wrongful intermixture of goods of same  
 kind belonging to different owners. See  
 Confusion of Goods, § 4.

Liability of corporation for exemplary dam-  
 ages. See Corporations, § 50.

For breach of covenant of seisin. See Cove-  
 nants, § 8.

For breach of warranty of title. See Cove-  
 nants, § 9.

For injuries to growing crops. See Crops,  
 § 3.

For injury resulting in death. See Death, § 5.

For taking property for public use. See Emi-  
 nent Domain, §§ 11-14.

For breach of warranty on exchange of lands.  
 See Exchange of Property, § 1.

For setting out fire. See Fires, § 2.

Recoverable against liquor seller for injuries  
 inflicted by drunkard. See Intoxicating  
 Liquors, § 2.

For malicious prosecution of civil action. See  
 Malicious Prosecution, § 1.

Master's liability for exemplary damages for  
 acts of servant. See Master and Servant,  
 § 35.

For wrongful discharge of servant. See Mas-  
 ter and Servant, § 5.

For change of street grade. See Municipal  
 Corporations, § 27.

For failure to send or deliver telegram. See  
 Telegraphs and Telephones, §§ 4-7.

Mitigation of damages for wrongful conver-  
 sion. See Trover and Conversion, § 3.

For breach of contract to convey. See Ven-  
 dor and Purchaser, § 11.

For negligent cold storage. See Warehouse-  
 men, § 3.

For cutting, removing or injuring timber.  
 See Woods and Forests, § 1.

#### § 1. Law Governing Damages for Tort.

Where cause grows out of contract.  
 91: 725.

Law of place of injury or of forum.  
 91: 726.

— Determining whether action is  
 maintainable. 91: 726.

— Fixing measure of damages. 91:  
 729.

#### § 2. Law Governing Damages for Breach of Contract.

Law of place of making and place of  
 performance. 91: 716.

Where place of making is place of part  
 performance. 91: 717.

Negotiable instruments. 91: 718.

— Secured by property in foreign  
 state. 91: 719.

Effect of foreign law. 91: 720.

— Where law of forum is different  
 from place of making. 91:  
 721.

— Where law of forum is the same  
 as place of making. 91: 722.

— Bond given in one court sued on  
 in another. 91: 724.

### § 3. Law Governing Interest as Damages.

Distinction between conventional interest and interest by way of damages. 91: 731.

Law of place of making and place of performance. 91: 732.

— Bills and notes. 91: 733.

Law of place where property is situated. 91: 734.

Foreign law—In general. 91: 735.

— Judgments. 91: 735.

— Contracts. 91: 738.

— Bills and notes. 91: 739, 740.

— Bonds. 91: 740.

— Torts. 91: 740.

Evidence of foreign interest rate. 91: 741.

Effect of failure to prove foreign law. 91: 741.

### § 4. Destruction of Property Having No Market Value.

In general. 62: 791.

Market value as test. 62: 792, 795.

Value to the owner as test. 62: 792.

— Wearing apparel and household goods. 62: 793.

Compensation for actual loss. 62: 794.

Real and ordinary value at time of destruction. 62: 795.

Cost of production or replacing. 62: 796.

— Family portraits. 62: 797.

Property intended for market. 62: 799.

Placing injured party in statu quo. 62: 800.

### § 5. For Fraudulent Representations Inducing Sale or Exchange of Land.

In general. 123: 777.

Representations as to value, quality or condition. 123: 778.

Representations as to title. 123: 786.

Representations as to encumbrances. 123: 788.

Representations as to quantity or boundaries. 123: 790.

Representations as to location or identity. 123: 792.

Texas decisions. 123: 793.

### § 6. Mental Anguish as Element.

For breach of marriage promise. 7: 534.

For breach of contract. 7: 534.

For torts. 7: 535.

For injury causing death. 7: 535.

Must be natural consequence of injury. 7: 536.

For injury to child. 7: 536.

For trespass to land. 7: 536, 537.

### § 7. Fright as Element.

General rule. 77: 860.

Fright accompanied by injury. 77: 860.

Fright causing injury. 77: 862.

What constitutes injury. 77: 865.

Wanton or intentional wrong. 77: 867.

Mere fright producing injury. 77: 867.

Fear of injury to another. 77: 871.

Injury to property causing fright and illness. 77: 872.

### § 8. Attorney's Fees as Damages.

General rule denying. 8: 158.

Exceptions to the rule. 8: 160.

In suits on injunction, attachment and other bonds. 8: 161.

In actions for malicious prosecution. 8: 161.

### § 9. Exemplary or Punitive.

Cases sustaining right to recover. 28: 870.

Cases denying right. 28: 871.

Class of cases in which recoverable. 28: 874.

Death of wrongdoer destroys right. 28: 875.

Against infants and insane persons. 28: 875.

Absence of wrong intent, provocation, etc. 28: 875.

Against corporations. 28: 876.

For negligence. 28: 877.

General grounds for allowance. 28: 878.

Cases in which recoverable. 28: 879.

Actions for personal injuries. 28: 880.

Carrier's liability. 28: 881.

Criminal acts. 28: 882.

Actual damages must be inflicted. 28: 883.

Province of court and jury. 28: 883.

### § 10. Same.

Nature. 101: 732, 733.

General principles of law applicable to. 101: 734.

**§ 11. Duty to Lessen.**

Duty of person whose property is destroyed or injured to replace it to mitigate or fix the damages. 6: 365.

**§ 12. Admissibility of Evidence of Family Ties and Obligations of Plaintiff.**

General rule. 85: 835.

Number and ages of children. 85: 837.

Evidence that plaintiff has a family. 85: 839.

Actions for injuries to child. 85: 839.

Error in admitting evidence may be cured by instructions. 85: 839.

**§ 13. Liquidated Damages or Penalty.**

In general. 108: 47.

History and development of law. 108: 48.

Liquidated damages not favored by courts. 108: 48.

**§ 14. Character and Form of Contract Liquidating Damages.**

Stipulations against delay. 108: 53.

Contracts containing several provisions. 108: 56.

Contracts involving deposit of money. 108: 58.

Contracts of employment. 108: 59.

Contract not to follow business or calling. 108: 59.

Leases. 108: 60.

Conveyances. 108: 61.

Sales of personalty. 108: 62.

**§ 15. Construction of Contract Liquidating Damages.**

In general. 108: 50.

Intention of parties. 108: 50.

Language employed. 108: 51.

Uncertainty of actual damages. 108: 51.

Magnitude of sum stipulated. 108: 52.

Circumstances of case. 108: 53.

**DAMS.**

Condemnation of land for. See Eminent Domain, § 4.

For impounding debris of mines. See Mines and Minerals, § 20.

Diminishing flow of stream. See Waters and Watercourses, § 11.

**DANGEROUS ARTICLES.**

Manufacturer's liability to third persons for negligence. See Negligence, § 9.

**DANGEROUS PREMISES.**

Liability for leasing. See Landlord and Tenant, § 28.

Right to maintain premises dangerous to adjoining owners. See Adjoining Land Owners, § 2.

**DANGEROUS WEAPONS.**

Right to carry. See Weapons, § 1.

**DANGER SIGNALS.**

Duty of railroads to give. See Railroads.

**DANGER TO LIFE.**

Necessary to existence of right of self-defense. See Homicide, § 6.

**DATE.**

In certificate of acknowledgment. See Acknowledgment, § 4.

On holographic will. See Wills, § 9.

**DAY.**

Offenses continuing through one day as single offense. See Criminal Law, § 3.

What constitutes. See Time, § 1.

**DEAD ANIMALS.**

Police power of cities over carcasses of. See Municipal Corporations, § 3.

**DEAD BODIES.**

Regulation of transportation of. See Health, § 2.

**§ 1. Property and Possessory Rights in.**

Right to possession and burial. 75: 424.

— Surviving spouse. 75: 425.

Disinterment. 75: 426.

Removal. 75: 428.

Damages for mutilation. 75: 428.

Remedies to enforce rights. 75: 426.

**DEAD DEBTS.**

Revival of. See Bankruptcy, § 1.

**DEADLY WEAPONS.**

Right to carry. See Weapons, § 1.

**DEATH.**

PRESUMPTION OF DEATH, § 1.

PRESUMPTION OF SURVIVORSHIP WHERE PERSONS PERISH IN COMMON DISASTER, § 2.

RIGHT OF ACTION AND PROCEEDINGS TO ENFORCE IT, § 3.

WHO MAY SUE, § 4.

ELEMENTS AND MEASURE OF DAMAGES, § 5.

**EVIDENCE, § 6.****ADMISSIBILITY OF EVIDENCE OF DOMESTIC OBLIGATIONS OF PLAINTIFF, § 7.**

Right to sue in one state for cause of action for death arising under statute of another state. See Action, § 1.

Death of party to civil action as ground for abatement. See Abatement and Revival, § 2.

Death of party to action for death by wrongful act as ground for abatement. See Abatement and Revival, § 3.

Effect on contract of death of promisor. See Contracts, § 23.

Attack upon divorce decree after death of party. See Divorce, § 15.

Effect of votes cast for candidate who is dead. See Elections, § 1.

Relief from fraudulent conveyance after death of grantor. See Fraudulent Conveyances, § 9.

Action for death of person under guardianship. See Guardian and Ward, § 4.

Admissibility of dying declarations in prosecution for homicide. See Homicide, § 22.

What constitutes death by accident. See Insurance, § 10.

Proof of death. See Insurance, § 37.

Effect of death of beneficiary before insured on right to proceeds of policy. See Insurance, § 41.

Validity and effect of judgment for or against decedent. See Judgment, §§ 3, 4.

Effect of death of owner of building on right to file lien claim. See Mechanics' Liens, § 1.

Effect of death of partner. See Partnership, § 19.

Of principal as revocation of power of attorney. See Principal and Agent, § 12.

Killing trespasser. See Trespass, § 3.

Who may execute trust after death of all trustees. See Trusts, § 11.

**§ 1. Presumption of Death.**

From seven years' absence. 104: 198.

— Rebuttal and burden of proof. 104: 201.

— Evidence to rebut. 104: 201.

— Fugitive from justice. 104: 202.

Time of death of absent person. 104: 202.

Less than seven years' absence. 104: 205.

— Exposure to peril. 104: 206.

Long-continued absence. 104: 207.

Sailors and soldiers. 104: 209.

Persons of extreme old age. 104: 209.

Presumption at time judgment is rendered. 104: 210.

**§ 2. Presumption of Survivorship Where Persons Perish in Common Disaster.**

In general. 104: 210.

Husband and wife. 104: 211.

Parent and child, or other relatives. 104: 212.

**§ 3. Right of Action and Proceedings to Enforce It.**

Purely statutory. 70: 669.

Enactment and construction of statutes. 70: 672.

Compliance with statute necessary. 70: 675.

Two classes of statutes. 70: 676.

Instantaneous death. 70: 677.

Proper and necessary parties and joinder. 70: 678.

Dependency and expectation of benefit. 70: 679.

Nature of injury causing death. 70: 680.

State statutes in federal courts—Marine torts. 70: 681.

Bar of action. 70: 681, 682.

— Compromise or release. 70: 683.

Statute of limitations. 70: 686.

**§ 4. Who may Sue.**

Foreign administrator. 12: 869.

Death from injury inflicted in another state. 12: 869.

Stepfather. 12: 870.

Children. 12: 870.

Administrator. 12: 870.

**§ 5. Elements and Measure of Damages.**

Pecuniary loss sustained by survivor. 12: 375.

Sufferings of person killed. 12: 377.  
Punitive or exemplary damages. 12: 377.

Present value of reasonable expectation of pecuniary advantage to survivor. 12: 378.

Mode of estimating value of life. 12: 379.

Deduction of amount of life insurance collected. 12: 380.

Loss of pension or annuity. 12: 381.

Death of minor. 12: 381.

Death of parent. 12: 382.

Action for death of child. 12: 382.

**§ 6. Evidence.**

Admissibility of evidence of fact that deceased was suffering from disease as a defense or in mitigation of damages. 10: 64-66.

**§ 7. Admissibility of Evidence of Domestic Obligations of Plaintiff.**

Action by widow for death of husband. 85: 840.

Action by dependents for death of their supporters. 85: 841.

### DE BONIS NON.

Administrators de bonis non. See Executors and Administrators, §§ 23-26.

### DEBRIS.

Deposit of debris of factories in streams. See Manufacturers, § 1.

Mining debris law. See Mines and Minerals, § 20.

### DEBTOR.

Application of payments by. See Payment, § 5.

### DEBTS.

Necessity for existence of legal debt to valid account stated. See Account Stated, § 1.

Prohibition against imprisonment for. See Arrest, § 3.

Revival of debts discharged by bankruptcy. See Bankruptcy, § 1.

Due estates of decedents from executors and administrators. See Executors and Administrators, § 19.

Situs of debts for purpose of garnishment. See Garnishment, § 2.

Description of debt in mortgage. See Mortgages, § 7.

Bar of debt as bar of mortgage. See Mortgages, § 17.

Which cities may not incur. See Municipal Corporations, § 13.

Of religious societies. See Religious Societies, § 1.

### DECEASED WITNESS.

Admissibility of testimony of decedent given in former proceeding. See Criminal Law, § 36.

### DECEDENTS.

Estates of. See Descent; Executors and Administrators.

Validity and effect of judgment for or against. See Judgment, §§ 3, 4.

### DECISIONS.

See Judgment.

Doctrine of stare decisis. See Courts, § 6.

### DECLARATIONS.

Of mother at child-birth as evidence of legitimacy of child. See Bastards, § 2.

Of conspirators as evidence. See Conspiracy, § 5.

Of former owner as evidence. See Evidence, § 14.

Of agents as evidence. See Evidence, § 15.

Effect of death of declarant. See Evidence, § 16.

Dying declarations. See Homicide, § 22.

Of testator to sustain or defeat will. See Wills, § 31.

### DECOY.

Decoying party within jurisdiction. See Courts, § 1.

### DECOYED PERSONS.

Exemption from civil process of persons decoyed into jurisdiction. See Process, § 4.

### DECOY LETTER.

Stealing. See Postoffices, § 2.

### DEDICATION.

PUBLIC STREETS, § 1.

HIGHWAYS, § 2.

IMPLIED ACCEPTANCE, § 3.

Applicability of statute of frauds to. See Frauds, Statute of, § 8.

Of highway. See Highways, § 3.

Of homestead by one spouse only. See Homestead, § 8.

#### § 1. Public Streets.

Common-law rules. 129: 579.

Abandonment to or acquiescence in public use. 129: 582.

— Knowledge and consent of owner and nature of use. 129: 595.

— Time requisite. 129: 602.

— Use of vacant lot or uninclosed land. 129: 602.

— Public use of private way and improvements. 129: 604.

— Use and maintenance of railroad crossings. 129: 607.

#### § 2. Highways.

In general. 57: 752.

Acceptance. 57: 752.

Proof of. 57: 756.

Time of use as evidence of. 57: 759.

#### § 3. Implied Acceptance.

General principles controlling. 129: 609.

Official acts. 129: 611.

— Ordinances and resolutions. 129: 614.

— Improvements and repairs. 129: 615.

— Acceptance of part of property dedicated. 129: 617.

— Time of acceptance. 129: 619.

Acceptance implied from user. 129: 621-629.

### DEEDS.

IN GENERAL, § 1.

WORDS SUFFICIENT TO CONSTITUTE, § 2.

MEMORANDUM OR INDORSEMENT ON, § 3.

EXECUTION, § 4.  
 DESCRIPTION OF PROPERTY, § 5.  
 GENERAL DESCRIPTION, § 6.  
 REPUGNANT CLAUSES, § 7.  
 WHAT CONSTITUTES DELIVERY, § 8.  
 ASSIGNMENT OR REDELIVERY, § 9.  
 CONSIDERATION, § 10.  
 IN CONSIDERATION OF SUPPORT OF GRANTOR, § 11.  
 BREACH OF COVENANT FOR SUPPORT OF GRANTOR, § 12.  
 TO PERSONS NOT IN BEING, § 13.  
 QUITCLAIM DEEDS, § 14.  
 TIMBER DEEDS, § 15.  
 APPURTENANCES, § 16.  
 VALIDITY OF CONDITIONS AND RESTRICTIONS, § 17.  
 — RESTRICTIONS ON USE OF PROPERTY, § 17½.  
 LIABILITY OF GRANTEE ON COVENANTS AND CONDITIONS, § 18.  
 CONDITIONS PRECEDENT, § 19.  
 WHAT WORDS CREATE CONDITIONS PRECEDENT, § 20.  
 TAKING ADVANTAGE OF BREACH OF CONDITION SUBSEQUENT, § 21.  
 EFFECT OF IMPOSSIBILITY OF PERFORMANCE OF CONDITION, § 22.  
 Acknowledgment of deeds. See Acknowledgment.  
 Alteration of. See Alteration of Instruments, § 1.  
 Instruments sufficient to constitute color of title. See Adverse Possession, §§ 9, 10.  
 Construction of calls for lines, marks, monuments, course and distance. See Boundaries, §§ 4-7.  
 Subject to cancellation. See Cancellation of Instruments, § 1.  
 Cancellation of deeds for forgery, mistake or undue influence. See Cancellation of Instruments, §§ 3-5.  
 To corporations. See Corporations, § 55.  
 Covenants relating to title, use and possession. See Covenants.  
 Crops passing by deed of land. See Crops, § 2.  
 Conveyance by curtesy. See Curtesy, § 11.  
 Which may be deposited in escrow. See Escrows, § 2.  
 Of homestead. See Homestead, § 6.  
 Between married persons. See Husband and Wife, § 7.  
 By abandoned wife. See Husband and Wife, § 11.  
 Joinder of husband in wife's deed. See Husband and Wife, § 13.  
 Of infants. See Infants, § 1.  
 Of insane persons. See Insane Persons, § 4.  
 Revenue stamps on. See Internal Revenue, § 1.  
 Absolute deed as mortgage. See Mortgages, §§ 1, 3.  
 Alienability of settler's rights on public lands. See Public Lands, § 3.  
 Reformation of. See Reformation of Instruments, §§ 1-6.  
 Tax deeds. See Taxation, § 19.  
 By cotenants. See Tenancy in Common, §§ 2, 3.  
 Trust resulting from deed to one person when consideration is paid by another. See Trusts, §§ 1, 7.  
 By trustee. See Trusts, § 13.

Merger of contract of sale in deed. See Vendor and Purchaser, § 1.  
 Contract to purchase and convey. See Vendor and Purchaser, §§ 1-13.  
 What constitutes a marketable title. See Vendor and Purchaser, § 6.  
 Venue of action for breach of warranty. See Venue, § 1.  
 Distinguished from wills. See Wills, § 2.  
 To take effect after death as will. See Wills, § 3.  
 Conditions in deeds in restraint of marriage or favoring divorce. See Wills, § 43.

### § 1. In General.

To spiritual mediums. 1: 88.  
 Denials on information and belief. 133: 199.

### § 2. Words Sufficient to Constitute.

No particular form of words necessary. 31: 26.  
 Apposite and appropriate language necessary. 31: 26.  
 Cannot be supplied by judicial interpolation. 31: 26.  
 Apparent intent controls meaning. 31: 26, 27.

### § 3. Memorandum or Indorsement on.

As part of deed. 31: 27.

### § 4. Execution.

Effect of execution of deed by person not named in it as grantor. 23: 82-84.  
 Forged deed. 23: 84.  
 Deed purloined or obtained by fraud. 23: 84.  
 Fictitious name. 23: 85.

### § 5. Description of Property.

Construction of words "more or less," "from," "to," "from a street," "shore," "to the shore." 28: 631, 632.

### § 6. General Description.

Use of word "estate." 66: 59.  
 All one's estate. 66: 60.  
 Sufficiency. 66: 60.  
 Imparts notice. 66: 61.

### § 7. Repugnant Clauses.

Controlling effect of intent of parties. 111: 770.  
 Rejection of words inconsistent with intent. 111: 771.  
 General and specific words. 111: 771.

Relative positions of conflicting clauses. 111: 772, 773.

Premises control habendum. 111: 774.  
Recitals and operative words. 111: 775.

Reservations, exceptions and conditions. 111: 776.

Covenants and granting clause. 111: 776.

Descriptions of land. 111: 776.

Descriptions of parties. 111: 777.

Effect of repugnant or inconsistent clauses. 60: 93-95.

### § 8. What Constitutes Delivery.

In general. 53: 537.

Who may deliver and accept. 53: 538.

Sufficiency of delivery. 53: 541.

Intention and acceptance. 53: 544.

Recording as delivery. 53: 547.

Illustrations. 53: 550.

Contingency of death. 53: 553.

Delivery in escrow. 53: 555.

### § 9. Assignment or Redelivery.

As passing the title to the assignee. 31: 28.

Unsealed assignment good in equity. 31: 28.

### § 10. Consideration.

Love and affection coupled with value. 65: 798.

Effect of mere inadequacy. 65: 799.

Merely nominal consideration does not make gift of purchase. 65: 798, 800.

### § 11. In Consideration of Support of Grantor.

General statement. 130: 1040.

Construed as mortgage. 130: 1041.

Breach of agreement. 130: 1038.

Kinds of relief, damages, specific performance and rescission. 130: 1051-1053.

Grounds for relief, fraud, undue influence, incapacity and failure of consideration. 130: 1054.

Rights of creditors, purchasers and heirs. 130: 1056.

### § 12. Breach of Covenant for Support of Grantor.

What constitutes. 130: 1048.

Waiver. 130: 1050.

Caused by acts of third persons. 130: 1051.

### § 13. To Persons not in Being.

Estates to take effect immediately—  
Grantee not yet in being. 84: 236.

— Grantee who has ceased to exist. 84: 237.

— Grantee en ventre sa mere. 84: 237.

— Grant to fictitious person. 84: 238.

— Grant to heirs of living person. 84: 238.

— Grant to estate of designated person. 84: 239.

— Grants to corporations not in existence. 84: 239.

Grants of future estates—Estates in remainder. 84: 239.

— Grants to trustees for beneficiaries not in being. 84: 241.

### § 14. Quitclaim Deeds.

What are. 105: 854.

Operation and effect—Deed given to transmit title of estate. 105: 855.

— As to after-acquired title. 105: 857.

— As to equities existing against grantor. 105: 858.

— Under registry laws. 105: 858.

— When deed contains covenants of title. 105: 862.

Estoppel. 105: 863.

Recovery. 105: 863.

### § 15. Timber Deeds.

When timber must be cut and removed  
—When time is specified. 128: 868.

— When time is not specified. 128: 870.

Size of timber. 128: 872.

Deed conveys interest in land. 128: 874.

Statute of frauds. 128: 875.

Indefiniteness sufficient to avoid. 128: 876.

Timber conveyed. 128: 876.

### § 16. Appurtenances.

What are. 81: 764.

Pass without special mention. 81: 765.

What passes. 81: 765.

Rights of way and other easements. 81: 767.

Water rights. 81: 768.

Personalty. 81: 770.  
Light and air. 81: 771.

### § 17. Validity of Conditions and Restrictions.

Essentials of valid restriction. 95: 214.  
By and against whom enforceable. 95: 215.  
Restraint of marriage. 95: 215.  
Restraint of alienation. 95: 217.  
Revesting of estate on death of grantee. 95: 218.  
Restricting right of partition. 95: 218.  
Restricting right to sell land. 95: 218.  
Reserving right to revoke grant. 95: 219.  
Reserving free flow of light and air. 95: 219.  
Building restrictions—In general. 95: 219.  
— Effect of change in neighborhood. 95: 221.

### § 17½. — Restrictions on Use of Property.

In general. 95: 221.  
Offensive business. 95: 221.  
Sale of liquor. 95: 222.  
Hotels and public houses. 95: 223.  
Railways and depots. 95: 223.  
Mills and warehouses. 95: 223.  
Courthouse and public buildings. 95: 224.  
Schools and churches. 95: 224.  
Cemeteries. 95: 224.

### § 18. Liability of Grantee on Covenants and Conditions.

Conflict of decisions. 126: 349.  
Rule of nonliability of grantee as covenantor. 126: 350–358.  
— Exceptions to the rule. 126: 360–369.  
Effect of abolition of distinction between sealed and unsealed instruments. 126: 369.  
Real covenants. 126: 369–372.  
Personal covenants. 126: 372.  
Privity of estate and contract. 126: 373.  
Covenants of ancestor relating to land. 126: 376.  
Obligation to perform covenants. 126: 377.  
Remedies. 126: 379.

### § 19. Conditions Precedent.

Defined. 102: 366.

Tests to determine what are—Intention. 102: 367.

— Inserting condition before granting clause. 102: 367.  
— Where condition must be performed before estate vests. 102: 368.  
— Where deed prescribes time title is to vest. 102: 368.  
— Where performance of condition is the consideration. 102: 368.  
— Where to hold the condition as precedent would render the instrument inoperative or void. 102: 369.  
— Want of limitation over. 102: 369.  
Doubts are resolved against the condition. 102: 369.  
Consequence of failure to perform. 102: 370.

### § 20. What Words Create Conditions Precedent.

Definitions. 79: 747.  
Covenants, trusts, expression of condition. 79: 750.  
Special or particular purposes. 79: 753.  
Against sale of intoxicants. 79: 762.  
For maintenance and support. 79: 763.  
Illustrations. 79: 765–768.

### § 21. Taking Advantage of Breach of Condition Subsequent.

Breach does not ipso facto revest estate. 93: 572.  
By and against whom breach may be asserted. 93: 572.  
Demand for performance of condition. 93: 574.  
Re-entry for breach of condition. 93: 575.  
What is sufficient re-entry. 93: 576.  
Form of action and relief given. 93: 578.

### § 22. Effect of Impossibility of Performance of Condition.

Generally. 70: 829, 832, 833.  
Senseless, repugnant and nugatory conditions. 70: 830.  
Prevention of performance. 70: 832.

## DE FACTO CORPORATIONS.

What are. See Corporations, § 1.  
General note. See Corporations, § 2.



Personal liability of persons acting as corporation without authority. See Corporations, § 3.  
Transactions of supposed but nonexistent corporations. See Corporations, § 6.

### DE FACTO OFFICERS.

Who are. See Officers, § 4.  
Status of. See Officers, § 5.

### DEFAULT.

Notice of default necessary to bind guarantor. See Guaranty, § 6.  
Validity of agreement for higher or exorbitant rate of interest after. See Interest, § 1.  
Right of vendor of land, on default of purchaser, to recover possession. See Vendor and Purchaser, § 8.

### DEFAULT JUDGMENT.

See Judgment.  
Against married woman. See Judgment, § 8.

### DEFECTIVE INCORPORATION.

Effect of. See Corporations, § 1.

### DEFECTIVE MORTGAGE.

As equitable mortgage. See Mortgages, § 3.

### DEFECTIVE RECORD.

Effect on rights of third persons. See Records, § 3.

### DEFENDANTS.

See Parties.

### DEFENSE OF ANOTHER.

Justifying homicide. See Homicide, § 6.

### DEFENSES.

To prosecution for arson. See Arson, § 1.  
In prosecution for bigamy. See Bigamy, § 3.  
In prosecution for conspiracy. See Conspiracy, § 1.  
In forcible entry suits. See Forcible Entry and Detainer, § 8.  
Against obligations based on gambling transactions. See Gaming, § 3.  
Available to garnishee. See Garnishment, § 1.  
Justifying homicide. See Homicide, § 5.  
For libel or slander. See Libel and Slander, §§ 13-15.  
In actions on lost instruments. See Lost Instruments, § 1.  
Power of court to strike out answer stating valid defense. See Pleading, § 4.

### DEFICIENCY OF ASSETS.

Abatement of legacies on deficiency of assets. See Wills, § 53.

### DEFINITENESS.

Required in charitable trust. See Charities, § 2.

### DEFRAUDING CREDITORS.

By transfers of property to evade debts. See Fraudulent Conveyances.

### DEGREES OF CRIME.

Of murder. See Homicide, § 1.  
Of manslaughter. See Homicide, § 2.

### DEGREES OF KINDRED.

See Descent; Incest.

### DELAY.

Liability of freight carrier for loss caused by. See Carriers, § 13.  
Liability of express companies. See Carriers, § 5.  
In transportation of livestock. See Carriers, § 29.  
In prosecution for crime. See Criminal Law, § 41.

### DELAYING CREDITORS.

By transfer of property to evade debts. See Fraudulent Conveyances.

### DELEGATION OF AUTHORITY.

By auctioneers. See Auctions and Auctioneers, § 2.

### DELIBERATIONS OF JURY.

In criminal cases. See Criminal Law, § 54.  
In civil cases. See Trial, § 8.

### DELIVERY.

Effect of fraud in procuring delivery of promissory note. See Bills and Notes, § 3.  
Of freight by carrier. See Carriers, §§ 11, 12.  
Of express packages. See Carriers, § 5.  
Of baggage. See Carriers, § 59.  
Of papers for filing. See Courts, § 8.  
Of deed. See Deeds, § 8.  
Of escrow by depository. See Escrows, §§ 5, 6.  
Of gifts causa mortis. See Gifts, § 3.  
Of guaranty. See Guaranty, § 3.  
Of insurance policy. See Insurance, §§ 7-9.

### DELUSIONS.

Constituting justification for crime. See Criminal Law, § 8.  
What are insane delusions. See Insane Persons, § 1.  
Insane delusions avoiding wills. See Wills, §§ 15-17.

### DEMAND.

For payment of certified check. See Banks and Banking, § 5.  
For payment of foreign bill of exchange. See Bills and Notes, § 17.  
Statute of limitations on obligations payable on or after demand. See Limitation of Actions, § 8.  
For trial by jury. See Jury, § 1.  
Before suit for wrongful conversion. See Trover and Conversion, § 2.

**DEMISES.**

See Landlord and Tenant.

**DEMONSTRATIVE BEQUESTS.**

Nature and essentials. See Wills, § 48.

**DEMURRAGE.**

Right of carrier to charge, reasonableness of charge and lien of carrier. See Carriers, § 14.

The law of demurrage as applied to transportation by water. See Shipping, § 4.

**DEMURRER.**

See Pleading.

Pleading statute of frauds by. See Frauds, Statute of, § 10.

**DENIALS.**

On information and belief. See Pleading, § 1.

**DENTISTS.**

Occupation tax on. See Licenses, § 1.

Degree of skill and care required of. See Physicians and Surgeons, § 1.

**DEPENDENT AND INDEPENDENT CLAUSES.**

See references under Partial Invalidity.

**DEPORTATION.**

Of fugitive from justice. See Extradition, § 12.

**DEPOSITARIES.**

Of escrows. See Escrows, § 4.

**§ 1. Safe Deposit Companies.**

Relation between company and depositor. 72: 206.

Care required. 72: 206.

Duty and care in surrendering property. 72: 206, 207.

Duty of safe deposit companies in the care of goods stored. 136: 221.

**DEPOSITIONS.**

In criminal cases as denial of right to confront witness. See Constitutional Law, § 13.

**§ 1. In General.**

What constitutes filing. 15: 296.

Stenographer's notes as. 81: 366-368.

**DEPOSITS IN BANKS.**

In commercial banks. See Banks and Banking, §§ 3, 4.

In savings banks. See Banks and Banking, § 23.

**DEPOTS.**

Duty of carrier to keep depots, platforms and approaches safe for passengers. See Carriers, § 33.

**DEPUTY OFFICERS.**

In whose name deputy must act. See Officers, § 3.

**DERELICT.**

Stealing from may be declared a crime. See Criminal Law, § 1.

**DESCENT.**

SUCCESSION OF ESTATES OF INTES-TATES, § 1.

DESCENT OF TITLE TO PERSONALTY, § 2.

WHO ARE RELATED BY AFFINITY, § 3.

LIABILITY OF HEIR FOR DEBT OF AN-CESTOR, § 4.

Proceedings against unknown heirs. See Absentees, § 2.

Descent of property of adopted child. See Adoption, §§ 1, 2, 4.

Right of adopted child to inherit. See Adoption, §§ 1, 2, 4, 5.

Descent cast as color of title. See Adverse Possession, § 10.

Crops passing by descent of land. See Crops, § 2.

Rights of heirs in personality of ancestor. See Executors and Administrators, § 16.

Inheritance tax. See Taxation, §§ 21-27.

Validity and effect of will leaving heir precisely what he would take by descent. See Wills, § 13.

Rights of heirs omitted from will. See Wills, § 35.

**§ 1. Succession of Estates of Intes-tates.**

Personal property. 12: 81.

Descent or hereditary succession defined. 12: 82.

Nature and origin of husband's succe-sion to wife's chattels. 12: 82.

Real estate of wife—At common law. 12: 83.

Inheritance from husband or wife—Nature of. 12: 83.

Husband's interest in estate of deceased wife. 12: 83.

Husband's succession as affected by stat-ute. 12: 84.

Personalty of wife leaving husband and children. 12: 85.

Real estate of wife leaving husband and children. 12: 85.

Real estate of husband leaving wife and children. 12: 87.

Estate of husband or wife dying without issue. 12: 88.

Estate of husband or wife leaving no kindred. 12: 89.

Community property. 12: 90.  
 Husband or wife of second marriage. 12: 90.  
 Forfeiture of rights of husband or wife. 12: 91.  
 Cannons of descent at common law. 12: 92.  
 Heir apparent has no vested interest in estate of ancestor. 12: 93.  
 Rights of aliens to transmit or inherit. 12: 93.  
 Necessity for seisin of ancestor. 12: 95.  
 Conflict of laws. 12: 95.  
 Children and children's children. 12: 96.  
 Who entitled to share as children. 12: 97.  
 Posthumous children. 12: 99.  
 Adopted children. 12: 100.  
 Illegitimate children. 12: 101.  
 Minors dying unmarried and without issue. 12: 103.  
 Grandchildren. 12: 104.  
 Parents of decedent. 12: 104.  
 Brothers and sisters. 12: 105.  
 When no spouse, brother, sister or child exists. 12: 105.  
 Who are next of kin. 12: 107.  
 Ancestral estate. 12: 109.  
 Kindred of the half blood. 12: 110.  
 Inheritance by right of representation. 12: 111.

## § 2. Descent of Title to Personalty.

General rule of succession. 112: 727.  
 Abeyance of title and relation to time of death. 112: 728.  
 Heir's right to possession. 112: 731.  
 Actions by heir in respect to. 112: 731-735.

## § 3. Who are Related by Affinity.

Kinds of relationships. 79: 200.  
 Blood relations of spouse. 79: 200.  
 Between blood relations of husband and blood relations of wife. 79: 201.

## § 4. Liability of Heir for Debt of Ancestor.

In general. 112: 1018.  
 Limitation of liability. 112: 1018.  
 Resort to personalty. 112: 1019.  
 Resort to realty. 112: 1020.  
 Liens. 112: 1021.  
 After administration. 112: 1022.  
 On specialties. 112: 1024.

Widow as heir. 112: 1024.  
 After alienation. 112: 1025.  
 Liability of each heir. 112: 1025.  
 Miscellaneous liabilities. 112: 1026.

## DESCRIPTION.

Of property in chattel mortgage. See Chattel Mortgages, § 3.  
 Of property in deed. See Deeds, §§ 5-7.  
 Of indebtedness in mortgage. See Mortgages, § 7.  
 Of property in mortgage. See Mortgages, § 8.

## DESCRIPTIVE WORDS.

As trademarks. See Trademarks and Trade Names, § 2.

## DESERTION.

See Abandonment.

As ground for divorce. See Divorce, §§ 2, 3.

## DESIGNATION OF BENEFICIARIES.

In mutual aid certificates. See Beneficial Associations, § 8.  
 In contracts for benefit of third person. See Contracts, § 4½.  
 In deed creating trust. See Trusts, § 6.

## DE SON TORT.

Executor de son tort. See Executors and Administrators, § 5.

## DESTROYED BUILDING.

Burning, as arson. See Arson, § 2.

## DESTROYED WILL.

Probate and establishment of. See Wills, §§ 25-27.

## DESTROYING WILL.

As revocation. See Wills, § 18.

## DESTRUCTION OF LEASED BUILDING.

Rights of landlord and tenant. See Landlord and Tenant, §§ 25, 26.

## DESTRUCTION OF PROPERTY.

To preserve health. See Health, § 2.  
 Maliciously. See Malicious Mischief.

## DETAINER.

Forcible and unlawful detainer. See Forcible Entry and Detainer, §§ 1, 2, 4.

## DETENTION.

Of persons suspected of crime. See Arrest, § 1.

## DETINUE.

### § 1. General Note.

Nature of remedy. 80: 741, 743.  
 Existence of remedy. 80: 742.  
 Matters necessary to support. 80: 744.

**DEVIATION.**

Of private road from granted way. See Private Roads, § 1.

**DEVICES.**

As trademarks. See Trademarks and Trade Names, § 2.

**DEVISEES.**

Right to contest will. See Wills, § 22.  
Personal liability for charges imposed by will. See Wills, § 55.

**DIAGNOSIS.**

Liability of physician for wrong diagnosis. See Physicians and Surgeons, § 2.

**DICE.**

As gambling devices. See Gaming, § 5.

**DILIGENCE.**

See Negligence.

**DIMINISHING FLOW.**

Of streams and surface water. See Waters and Watercourses, § 11.

**DIRECTORS.**

Liability of bank directors for loss of deposit. See Banks and Banking, § 3.  
Right to compensation for services. See Corporation, § 40.  
Liability for negligence. See Corporations, §§ 38, 43.  
Validity of contracts with corporation. See Corporations, § 42.  
Meetings. See Corporations, § 44.

**DISABILITIES.**

Of attorney. See Attorney and Client, § 11.

**DISAFFIRMANCE.**

See Rescission; Revocation.

Of agreement to arbitrate. See Arbitration and Award, § 2.  
Of infant's contracts. See Infants, § 4.

**DISASTER.**

Presumption of survivorship of persons perishing in common disaster. See Death, § 2.

**DISBARMENT OF ATTORNEYS.**

See Attorney and Client, § 1.

**DISCHARGE.**

Revival of debts discharged by bankruptcy. See Bankruptcy, § 1.  
Of grand jury. See Grand Jury, § 1.  
Of guarantor. See Guaranty, § 8.  
Of insolvent. See Insolvency, §§ 2, 3.  
Of jurors. See Jury, §§ 5, 6.  
Remedies of servant for wrongful discharge. See Master and Servant, § 5.  
Of debt by payment. See Payment.  
Of sureties. See Principal and Surety, § 9.

**DISCHARGE OF JURY.**

In criminal case. See Criminal Law, § 54.

**DISCHARGING PASSENGERS.**

Duty of carrier. See Carriers, § 41.

**DISCLAIMER.**

Effect on right to appeal. See Appeal and Error, § 2.

**DISCLOSURE.**

See Discovery.

Of trade secret or secret process. See Patents, § 1.

**DISCONTINUANCE.**

Of cemetery. See Cemeteries, § 2.  
Of public street. See Municipal Corporations, § 28.

**DISCONTINUING BUSINESS.**

Right of loan society to discontinue. See Building and Loan Associations, § 1.

**DISCOUNT.**

Usurious discount. See Usury, § 1.

**DISCOVERY.**

Of assets of decedents. See Executors and Administrators, § 13.  
Of mineral. See Mines and Minerals, §§ 1-5.  
Of books and papers belonging to public office. See Officers, § 12.

**§ 1. Power to Compel Production of Books and Papers.**

In general. 41: 388.

When power will be exercised. 41: 390.

Books and papers subject to discovery and inspection. 41: 392.

Procedure on application for order to produce. 41: 394.

Custody of documents to be inspected. 41: 396.

Enforcement of order for production. 41: 396.

Review of order. 41: 396.

**§ 2. Power to Compel Party to Submit to Physical Examination.**

In actions for personal injuries. 3: 554, 555.

In suits for divorce or annulment of marriage. 3: 556.

Decisions denying power. 3: 556.

Application for order for physical examination. 3: 557.

**§ 3. Physical Examination of Parties.**

Practice unknown at common law. 68: 242.

Power of court to order. 68: 243.

Discretion of trial court. 68: 247.

When order should be made. 68: 248.

Application for, and conduct of, examination. 68: 249.

Examination in open court. 68: 249.

Enforcement of order. 68: 250.

In divorce cases—Impotency. 68: 251.

**DISCOVERY SHAFT.**

Time to sink. See Mines and Minerals, § 3.

**DISCRETIONARY DUTIES.**

Mandamus to compel performance of. See Mandamus, § 4.

**DISCRETION OF COURT.**

Review of, on certiorari. See Certiorari, § 3.

To excuse juror. See Jury, § 5.

To allow intervention in civil actions. See Parties, § 3.

To deny writ of prohibition. See Prohibition, § 5.

To issue writ of quo warranto. See Quo Warranto, § 1.

To appoint receiver. See Receivers, § 1.

To grant specific performance. See Specific Performance, §§ 1, 2.

To determine competency of child witness. See Witnesses, § 4.

**DISCRIMINATION.**

In freight, express and passenger rates. See Carriers, § 3.

In legislation. See Constitutional Law, § 20.

In classification of occupations for purpose of occupation tax. See Licenses, § 4.

**DISEASE.**

As justification for breach of contract to marry. See Breach of Marriage Promise, § 1.

Liability for communicating disease to others. See Health, § 1.

Liability of physicians and surgeons for communicating. See Physicians and Surgeons, § 2.

**DISEASED ANIMALS.**

Quarantine and liability for spreading contagion. See Animals, §§ 7, 8.

**DISGRACE.**

Words tending to disgrace as libel. See Libel and Slander, § 3.

Right of witness to refuse to give testimony tending to subject him to disgrace. See Witnesses, § 13.

**DISHONOR.**

Of bank check, liability of bank. See Banks and Banking, § 9.

Notice of dishonor of foreign bill of exchange. See Bills and Notes, § 17.

**DISINTERMENT.**

Power to declare removal of dead bodies a crime. See Criminal Law, § 1.

Of dead bodies. See Dead Bodies, § 1.

**DISMISSAL AND NONSUIT.**

Mandamus to compel dismissal or reinstatement. See Mandamus, § 6.

**DISORDERLY HOUSE.**

Security against keeping. See Breach of the Peace, § 1.

Keepers as vagrants. See Vagrancy, § 2.

**§ 1. In General.**

What is a disorderly house. 134: 819-826.

Criminal responsibility of corporation keeping. 133: 779.

Authority of courts to require bond against keeping. 90: 798.

Keepers as vagrants. 137: 956.

**DISPATCHER.**

Train dispatcher as vice-principal. See Master and Servant, § 19.

**DISPATCHES.**

Telegraphic. See Telegraphs and Telephones.

**DISPUTE.**

Necessary to valid accord and satisfaction. See Accord and Satisfaction, § 5.

**DISQUALIFICATION.**

Of judges. See Judges, § 1.

**DISSOLUTION.**

Of voluntary associations. See Associations, § 1.

Of attachment. See Attachment, § 5.

Of corporations. See Corporations, § 67.

What constitutes. See Ejectment, § 1.

Of partnership. See Partnership, §§ 21-24.

**DISTANCE.**

Controlling effect of calls for. See Boundaries, § 5.

Judicial notice of. See Evidence, § 3.

**DISTILLERS.**

Right to lien for wages. See Mechanics' Liens, § 2.

**DISTILLING PRODUCTS.**

As necessities of life. See Monopolies, § 1.

**DISTINGUISHING MARKS.**

On election ballots. See Elections, § 7.

**DISTRAINING CATTLE.**

Cattle at large or damaging property. See Animals, § 6.

**DISTRESS FOR RENT.**

See Landlord and Tenant.

**DISTRIBUTION.**

Partition of estates of decedents for distribution. See Partition, § 3.

**DISTRICT OF COLUMBIA.**

Liability to garnishment. See Garnishment, § 3.

**DISTRICT SCHOOLS.**

See Schools and School Districts.

**DITCHES.**

See Waters and Watercourses.

**DIVERSION.**

Of corporate assets. See Corporations, § 53.  
Of accommodation paper. See Bills and Notes, § 1.  
Of water. See Waters and Watercourses.

**DIVIDED COURT.**

Force and effect of decision by divided court. See Courts, § 6.

**DIVIDENDS.**

Right of holders of preferred stock. See Corporations, § 19.  
Rights of life tenants and remaindermen. See Corporations, § 27.  
When dividends are cash or stock dividends. See Corporations, § 28.

**DIVIDING WALLS.**

See Party-walls.

**DIVINE HEALING.**

As practice of medicine. See Physicians and Surgeons, § 4.

**DIVINING RODS.**

Belief in divining rod as insane delusion. See Insane Persons, § 1.

**DIVISIBLE CONTRACTS.**

Necessity for complete performance of. See Contracts, § 19.

**DIVISION OF LOSS.**

Among different sets of sureties. See Principal and Surety, § 3.

**DIVISION OF PROPERTY.**

On severance and annexation of counties. See Counties, § 2.  
Property of void marriage. See Marriage, § 6.  
Among co-owners. See Partition.

**DIVORCE.**

GROUND, § 1.  
DESEPTION, § 2.  
SAME, § 3.  
CRUELTY, § 4.  
IMPOTENCY, § 5.  
LOSS OF PERFECTED RIGHT TO DIVORCE, § 6.  
RECRIMINATION AS DEFENSE, § 7.  
CONNIVANCE, § 8.  
ALIMONY, § 9.  
— POWER OF COURTS TO CREATE AND ENFORCE LIENS TO SECURE, § 10.  
— CONTEMPT TO ENFORCE PAYMENT, § 11.  
SUPPORT OF CHILDREN, § 12.  
— LIABILITY OF FATHER TO SUPPORT CHILD AWARDED TO MOTHER, § 13.  
DECREE, § 14.  
ATTACK UPON DECREE AFTER DEATH OF PARTY, § 15.  
ESTOPPEL TO QUESTION VOID OR VOIDABLE DECREE, § 16.

Proceedings against absent citizens. See Absentees, § 1.  
Contracts to obtain divorce for contingent fee. See Attorney and Client, § 6.  
Power to compel party to submit to physical examination. See Discovery, § 2.  
Liability of homestead for alimony. See Homestead, § 3.  
Effect on domicile of husband and wife. See Husband and Wife, § 2.  
Action by wife for separate maintenance. See Husband and Wife, § 30.  
Right of divorced wife to proceeds of policy payable to heirs. See Insurance, § 42.  
Extraterritorial effect of divorce decree. See Judgment, § 29.  
When suits for divorce and alimony do not operate as lis pendens. See Lis Pendens, § 2.  
Annulment and division of property of void marriage. See Marriage, §§ 7, 8.  
No exeat as auxiliary remedy. See No Exeat, § 3.  
Vagrancy as ground for divorce. See Vagrancy, § 5.  
Conditions in wills favoring divorce. See Wills, § 43.

**§ 1. Grounds.**

Because parties cannot live together. 135: 967.  
When divorce on the ground of adultery should not be denied because plaintiff had previously been guilty of the same offense. 93: 338, 339.

**§ 2. Desertion.**

Defined. 138: 147; 119: 618.  
Duration and continuity—Commencement. 138: 148.  
— Continuity. 138: 148.  
— Separation pending divorce suit. 138: 149.

Intent of parties. 138: 150.  
 Willfulness. 138: 151.  
 Consent of parties to separation. 138: 152.  
 Duty to seek reconciliation. 138: 153.  
 Refusal of reconciliation. 138: 154.  
 Good faith in seeking reconciliation. 138: 155.  
 Separation caused by misconduct, cruelty or adultery. 138: 156-158.  
 Involuntary separation—Confinement in jail or asylum. 138: 159.  
 — Judicial decree. 138: 160.  
 Separation through change of domicile. 138: 160.  
 Refusal to live near or with relatives. 138: 162.  
 Cessation of marital intercourse. 138: 162.  
 Neglect or refusal to support. 138: 164.  
 Adopting different religious creed. 138: 165.  
 Discretion of court. 138: 165.  
**§ 3. Same.**  
 Definition. 119: 618; 138: 147.  
 Intent to abandon. 119: 618; 138: 150.  
 Separation by consent. 119: 620; 138: 152.  
 Commencement. 119: 621; 138: 148.  
 Duration and continuity. 119: 622; 138: 148.  
 Duty to seek reconciliation. 119: 623; 138: 153.  
 Willful desertion. 119: 626; 138: 151.  
 Cruel conduct causing separation. 119: 626; 138: 156.  
 Misconduct justifying separation. 119: 627; 138: 156.  
 Causeless separation. 119: 629.  
 Refusal of sexual intercourse. 119: 632; 138: 162.  
 Support during separation. 119: 634.  
 Failure to support. 119: 634; 138: 164.  
 Inability to support. 119: 635.  
 Refusal to follow husband's change of domicile. 119: 636; 138: 160.  
 Separation pending suit. 119: 637; 138: 149.  
 Imprisonment or involuntary absence. 119: 638; 138: 159.

**§ 4. Cruelty.**

Defined. 65: 69.  
 Must be unmerited and unprovoked. 65: 70.

Instances of cruelty by actual violence. 65: 71.  
 Violence committed while intoxicated. 65: 73.  
 Single act of violence. 65: 74.  
 Cruelty without violence. 65: 75.  
 Excessive intercourse. 65: 79.  
 Refusal of intercourse. 65: 79.  
 Charges of adultery or unchastity. 65: 80.  
 Communication of venereal disease. 65: 82.  
 Violence inflicted while insane. 65: 82.  
 Adultery or sodomy. 65: 82.  
 Use of opiates. 65: 82.

**§ 5. Impotency.**

English and American law reviewed. 116: 241.  
 What constitutes. 116: 243.  
 Must exist at time of marriage. 116: 242.  
 Must be incurable. 116: 243.  
 Cause is immaterial. 116: 245.  
 Evidence to establish. 116: 245.  
 Old age as bar. 116: 246.  
 Physical examination of party to ascertain existence of malformation or impotency. 68: 251.

**§ 6. Loss of Perfected Right to Divorce.**

Nature of perfected right to divorce. 84: 136.  
 By reformation of defendant pending suit. 84: 137.  
 By conduct of plaintiff. 84: 137.  
 By reformation of habitual drunkard before filing of complaint. 84: 138.  
 By offer to return after desertion for statutory period. 84: 138.  
 By condonation. 84: 139.

**§ 7. Recrimination as Defense.**

Right of recrimination. 86: 333.  
 Mutuality of fault. 86: 334.  
 Adultery. 86: 336.  
 — After suit brought. 86: 337.  
 — After desertion. 86: 337.  
 — As defense to cruelty or habitual drunkenness. 86: 338, 339.  
 Cruelty. 86: 339.  
 — As defense to adultery or desertion. 86: 340.  
 Desertion—As defense to desertion, adultery or cruelty. 86: 341.

Physical incapacity as defense to adultery. 86: 342.

### § 8. Connivance.

In general. 120: 520.

When divorce is sought for adultery. 120: 521-526.

When divorce is sought for desertion. 120: 526.

When divorce is sought for cruelty. 120: 526.

### § 9. Alimony.

Nature of alimony. 102: 700.

Nature of decree for alimony. 102: 702.

### § 10. — Power of Courts to Create and Enforce Liens to Secure.

Lien on personal property. 102: 703.

Lien on real estate—Temporary alimony. 102: 703.

— Permanent alimony. 102: 703.

— When payable in installments. 102: 704.

— Effect of mere commencement of suit. 102: 705.

— Power to restrain alienation. 102: 707.

— Power to require security. 102: 707.

— Judgment must be specific. 102: 707.

— Necessity for statutory authority. 102: 708.

— Effect of decree on homestead. 102: 709.

— Effect of territorial jurisdiction. 102: 709.

— Retroactive operation of decree. 102: 709.

In suits for maintenance or separation. 102: 710.

In suits to annul marriage. 102: 710.

Enforcement of lien. 102: 711.

Effect of lien on contempt or other proceedings. 102: 712.

### § 11. — Contempt to Enforce Payment.

What constitutes—Previous refusal. 137: 881.

— Bona fide refusal from inability. 137: 883.

— Bona fide refusal on other grounds. 137: 885.

Nature of procedure. 137: 875.

Attachment for contempt. 137: 876.

Adoption of procedure. 137: 878.

Notice and demand prerequisite. 137: 879.

Purging the contempt. 137: 886.

### § 12. Support of Children.

Duty to support child awarded to mother when decree is silent as to support of child. 114: 700-703.

Power of court to modify decree as to provision for support of children. 114: 703.

### § 13. — Liability of Father to Support Child Awarded to Mother.

In general. 47: 314.

Conflicting decisions. 47: 316.

Effect of remarriage of mother. 47: 317.

Effect of allowance for support in divorce decree. 47: 317.

### § 14. Decree.

Effect of decree of divorce entered in another state, opinion of federal supreme court. 109: 254-283.

### § 15. Attack upon Decree After Death of Party.

In general. 125: 230.

By appeal. 125: 231.

By writ of error. 125: 231.

By motion or petition in original cause. 125: 233.

By new suit. 125: 237.

Right of stranger to make direct attack. 125: 242.

Effect of death of party pending appeal. 125: 243.

Collateral attack—By survivor. 125: 245.

— By stranger. 125: 248.

### § 16. Estoppel to Question Void or Voidable Decree.

Basis of rule. 133: 433.

Rule as to party who procured the decree. 133: 434.

Decree resulting from collusion. 133: 436.

Where record shows appearance of defeated party. 133: 439.



Where party has recognized validity of decree. 133: 440.

— By accepting alimony or other benefits. 133: 440.

— By remarriage. 133: 441.

— In subsequent proceedings. 133: 443.

— In subsequent contractual relations. 133: 443.

Where guilty defendant continues adulterous cohabitation after rendition of decree. 133: 444.

Where motive is solely mercenary or harassing. 133: 445.

By acquiescence or lapse of time. 133: 445.

— Delay until death of other party. 133: 446.

— Length of time requisite. 133: 446.

— Poverty as excuse for laches. 133: 450.

Who may set up estoppel. 133: 451.

### DOCKET.

Of justice of the peace. See Justice of the Peace, § 1.

### DOCKETING JUDGMENT.

See Judgment, § 11.

### DOCKS.

See Wharves.

### DOCTORS.

See Physicians and Surgeons.

Occupation tax on. See Licenses, § 1.

### DOCUMENTARY EVIDENCE.

In civil cases. See Evidence, § 17.

Subpoena duces tecum to obtain. See Witnesses, § 3.

### DOCUMENT STAMPS.

Effect of failure to affix. See Internal Revenue, § 1.

### DOGS.

Property rights in dogs and its enforcement. See Animals, § 2.

Justification for killing. See Animals, § 2.

Summary destruction as invasion of private property and deprivation of due process of law. See Animals, § 6.

Injuries by vicious dogs. See Animals, § 9.

As baggage. See Carriers, § 58.

Police power of state over. See Constitutional Law, § 4.

### DOMESTIC ANIMALS.

See Animals, § 1.

### DOMESTIC OBLIGATIONS.

As element of damage for personal injuries. See Damages, § 12.

As element of damages for death. See Death, § 7.

Admissibility of evidence of family ties and obligations of injured persons. See Negligence, § 18.

### DOMICILE.

Proceedings against persons leaving state with no intention to return. See Absentees, § 1.

Of wards. See Guardian and Ward, § 4.

Change of domicile as abandonment of homestead. See Homestead, § 10.

Killing in defense of habitation. See Homicide, § 6.

Of wife as that of husband. See Husband and Wife, § 2.

#### § 1. General Note.

Definitions of domicile, residence, citizenship. 48: 711-713.

Change of residence. 48: 713-716.

Abandonment. 48: 713-716.

Students, soldiers and prisoners. 48: 717.

Inmate of soldiers' home. 48: 717.

### DORMANT JUDGMENT.

Actions to revive. See Judgment, § 52.

### DOUBLE JEOPARDY.

See Former Jeopardy.

### DOUBLE LOCATION.

Basing two mine locations on one discovery. See Mines and Minerals, § 3.

### DOUBLE TAXATION.

By taxing both property and occupation, each occupation pursued or by tax by both state and city. See Licenses, § 5.

Of franchise. See Taxation, § 1.

### DOWER.

Effect of statute affecting vested dower right. See Constitutional Law, § 17.

Distinguished from curtesy. See Curtesy, § 2.

Applicability of statute of frauds to dower assignments and transfers. See Frauds, Statute of, § 2.

#### § 1. Obligations of Tenant.

Liability of tenant for taxes and assessments. 114: 450.

#### § 2. Effect of Partition upon.

Voluntary partition. 82: 863.

Involuntary partition. 82: 865.

**§ 3. Assignment.**

To whom assignment may be made. 39: 25.  
 Time for assignment. 39: 30.  
 Remedies to enforce. 39: 33.  
 Modes of setting apart. 39: 33.  
 Out of lands alienated by husband. 39: 36.  
 Rents and profits. 39: 38.  
 What law governs. 39: 38.

**DRAINS.**

Condemnation of land for. See Eminent Domain, § 4.

**DRAWING JURORS.**

Grand jurors. See Grand Jury, § 1.

**DRAY WAGON.**

Exempt from execution. See Exemptions, § 8.

**DREAMS.**

Belief in dreams as insane delusion. See Insane Persons, § 1.  
 Belief in dreams as insane delusion avoiding will. See Wills, § 17.

**DRIVERS.**

Law of the road governing. See Highways, § 9.  
 Imputing negligence of driver to occupant of vehicle. See Negligence, § 14.

**DROVERS.**

As passengers. See Carriers, § 38.

**DRUGGIST.**

Tax on occupation. See Licenses, § 1.  
 Liability of physician for negligent acts of druggist. See Physicians and Surgeons, § 3.  
 Drug manufacturers, liability to third persons for negligence. See Negligence, § 9.

**§ 1. Liability of Apothecaries for Negligence.**

Degree of care and skill required. 55: 255.  
 Highest degree of caution and prudence. 55: 255.  
 Not liable in absence of negligence. 55: 256.  
 Accidents and mistakes inexcusable. 55: 256.  
 Liability of seller or manufacturer to consumer. 55: 256, 257.  
 Liability for acts of servants. 55: 257.  
 Failure to label poisons. 55: 257, 258.  
 Deleterious effects of recommended prescription. 55: 258.

**DRUNKARDS.**

Right of carrier to refuse to carry drunken person. See Carriers, § 40.  
 Validity of contracts of intoxicated persons. See Contracts, § 12.  
 Capacity of intoxicated person to commit crime. See Criminal Law, § 8.  
 Liability of saloon-keeper for acts of. See Intoxicating Liquors, § 2.  
 Supplying drink as proximate cause of injury. See Negligence, § 16.  
 Intoxication as contributory negligence. See Negligence, § 13.

**DRUNKENNESS.**

As justification for breach of promise to marry. See Breach of Marriage Promise, § 1.

**DUCES TECUM.**

Subpoena duces tecum. See Witnesses, § 3.

**DUCKS.**

Wild ducks. See Game.

**DUE CARE.**

Presumption of. See Negligence, § 19.

**DUE PROCESS OF LAW.**

What constitutes. See Constitutional Law, § 24.  
 As applied to insane persons. See Insane Persons, § 7.

**DUNNING LETTERS.**

Offense of mailing. See Postoffices, § 3.

**DUPLICATE WILLS.**

Revocation of. See Wills, § 18.

**DURESS.**

See Extortion; Threats.  
 As defense in suit for breach of contract to marry. See Breach of Marriage Promise, § 1.  
 As justification for crime. See Criminal Law, § 6.  
 Right to recover payments made under duress. See Payment, § 3.

**DWELLING.**

See Domicile.  
 Subject to burglary. See Burglary, § 1.

**DYING DECLARATIONS.**

Receiving in evidence as denial of right to confront witness. See Constitutional Law, § 13.  
 Form, requisites and admissibility. See Homicide, § 22.

**DYNAMITE.**

Liability of persons keeping or using. See Explosives, § 1.

**EARNINGS.**

Of debtor exempt from execution. See Exemptions, § 5.

**EARTHQUAKE CLAUSE.**

In fire policies. See Insurance, § 11.

**ECCENTRICITIES.**

As insane delusions. See Insane Persons, § 1.  
As insane delusions avoiding will. See Wills, § 17.

**EASEMENTS.**

IN GENERAL, § 1.

DEFINITIONS, § 2.

KINDS OF EASEMENTS, § 3.

APPURTENANT, § 4.

LIGHT AND AIR, § 5.

IMPLIED EASEMENTS, § 6.

WHO MAY CREATE APPURTENANT EASEMENT, § 7.

MODE OF CREATION, § 8.

ALIENATION, § 9.

LOSS BY ABANDONMENT, § 10.

**§ 1. In General.**

Previous notes reviewed. 136: 681.

Elements of easement. 136: 681-684.

**§ 2. Definitions.**

Easements generally. 136: 681.

In gross. 136: 683.

Affirmative and negative. 136: 683.

Apparent and continuous. 136: 683.

Nonapparent and noncontinuous. 136: 683.

Quasi easements. 136: 684.

Appurtenant easement. 136: 685.

**§ 3. Kinds of Easements.**

General classification. 136: 682-684.

Licenses. 136: 684.

Distinguished from natural rights. 136: 684.

**§ 4. Appurtenant.**

Definition. 136: 685.

Distinguishing from easement in gross. 136: 685.

Creation and alienation. 136: 685, 686.

Who may create. 136: 687-689.

Mode of creation. 136: 689-699.

Statutory creation. 136: 700.

Notice of the easement. 136: 700.

**§ 5. Light and Air.**

Easement of light and air in public streets. 41: 323-329.

**§ 6. Implied Easements.**

Basis. 122: 207.

Tendency of courts to deny. 122: 207.

Ways of necessity. 122: 209-212.

Against purchaser of servient estate. 122: 212.

On severance of estate. 122: 213.

On partition. 122: 216.

In street or way. 122: 216.

— When grant refers to map or plat. 122: 217.

Easement of light and air—Across private premises. 122: 219.

— From public street. 122: 220.

Implied grant by severance and sale of property. 34: 708.

**§ 7. Who may Create Appurtenant Easement.**

Sole owner. 136: 687.

Tenant in common. 136: 688.

Husband and wife. 136: 689.

Homestead occupiers. 136: 689.

**§ 8. Mode of Creation.**

Express grant. 136: 689.

Covenant operating as grant. 136: 689.

Reservations or exceptions in deed. 136: 690.

Subject to cessation. 136: 692.

Parol grant followed by performance. 136: 692.

Implied grant. 136: 693.

Ancillary or secondary easements. 136: 694.

Effect of division of dominant estate. 136: 694.

Element of necessity. 136: 695.

Statutory creation. 136: 700.

Notice of the easement. 136: 700.

**§ 9. Alienation.**

Easement appurtenant. 136: 686.

**§ 10. Loss by Abandonment.**

Nonuser alone will not extinguish easement. 14: 282.

**EDUCATION.**

As charitable use. See Charities, § 1.

Public schools. See Schools and School Districts.

**EIGHT-HOUR LAW.**

Violation of, may be declared a crime. See Criminal Law, § 1.

**EJECTION.**

Of passenger from train. See Carriers, § 52.  
Of passenger from street-car. See Carriers,  
§ 41.

**EJECTMENT.**

NATURE OF RIGHT OF ACTION, § 1.  
INVASION OF POSSESSION NECESSARY  
TO MAINTAIN, § 2.  
PROPERTY SUBJECT TO EJECTMENT, § 3.  
EXECUTION OF WRIT OF RESTITUTION,  
§ 4.  
REMEDIES OF PLAINTIFF DISPOS-  
SESSED AFTER BEING PUT IN POS-  
SESSION, § 5.

Setoff of improvements. See Improvements,  
§ 1.

By vendor on default of purchaser. See Ven-  
dor and Purchaser, § 8.

**§ 1. Nature and Right of Action.**

General nature of ejectment. 116: 568.  
Plaintiff must be entitled to possession.  
116: 569.

Plaintiff must be out of possession.  
116: 569.

Plaintiff must have been ousted by de-  
fendant. 116: 570.

What constitutes ouster or disseizin.  
116: 570.

By executor or administrator. 136:  
82.

Defense of statute of limitations in eject-  
ment and like actions. 4: 382-  
384.

**§ 2. Invasion of Possession Necessary to Maintain.**

General rule. 116: 581.

Projecting eaves, cornices and over-  
hanging trees. 116: 582.

Dams overflowing lands. 116: 583.

Wires over private land. 116: 584.

Intrusions and encroachments on high-  
ways. 116: 585.

— By railroad, telegraph or public  
service corporations. 116: 585.

Intrusion on railroad right of way or  
turnpike. 116: 586.

**§ 3. Property Subject to Ejectment.**

In general. 116: 572.

Incorporeal hereditament, easement,  
servitude or license to use. 116:  
574.

Chattels or fixtures. 116: 574.

Parts of building. 116: 574.

Accretions, made lands and tide lands.  
116: 576.

Mining rights. 116: 577.

Cemeteries or burial lots. 116: 578.

Wharves and piers. 116: 579.

Right of way, street or vault under  
street. 116: 579.

**§ 4. Execution of Writ of Restitu-  
tion.**

Duty of officer in general. 15: 56.

Nature of possession taken by officer.  
15: 56.

Acts necessary to execution of writ. 15:  
57, 58.

Necessity for actual removal of defend-  
ant where plaintiff and defend-  
ant are cotenants. 15: 59.

Duty to put plaintiff in possession of  
fixtures and improvements. 15:  
59.

Who may be dispossessed under writ.  
15: 59, 61.

**§ 5. Remedies of Plaintiff Dispos-  
sessed After Being Put in Pos-  
session.**

Right to alias writ of possession. 135:  
647.

Remedies available to reinstate success-  
ful party who has been dispos-  
sessed. 135: 647.

**ELECTION OF REMEDIES.**

RIGHT TO MORE THAN ONE REMEDY ON  
SAME OBLIGATION, § 1.

RIGHT TO WAIVE TORT AND SUE IN AS-  
SUMPSIT, § 2.

WHEN ELECTION CONCLUDES OTHER  
REMEDY, § 3.

BINDING FORCE OF ELECTION TO PUR-  
SUE ONE OF TWO INCONSISTENT  
REMEDIES, § 4.

**§ 1. Right to More Than One Remedy  
on Same Obligation.**

In general. 73: 559.

Concurrent remedies. 73: 559.

**§ 2. Right to Waive Tort and Sue in  
Assumpsit.**

What waiving the tort means. 134:  
189.

Election to sue in tort or assumpsit.  
134: 189.

Trover. 134: 191.

Bailments. 134: 194.

Brokers. 134: 194.

Fraud. 134: 194.

— By agents where converted goods  
are returned. 134: 195.

Goods sold and delivered. 134: 195.

Stolen goods. 134: 195.

Infringement of patent. 134: 195.  
 Malpractice by physician and surgeon.  
     134: 195.  
 Liability of shippers. 134: 195.  
 Cutting timber. 134: 196.  
 Tenants in common. 134: 196.  
 Trespass. 134: 196.  
 Use and occupation. 134: 196.  
 Exceptions to the general rule. 134:  
     196.

### § 3. When Election Concludes Other Remedy.

In general. 1: 626.  
 Waiver of tort and suit on contract.  
     1: 627.  
 What is evidence of election. 1: 628.  
 Action at law on contract bars equitable  
     action to reform it. 1: 628.

### § 4. Binding Force of Election to Pursue One of Two Inconsistent Remedies.

Concurrent remedies. 10: 487, 488.  
 Actions against a number of persons sev-  
     erally liable. 10: 489.  
 Inconsistent remedies. 10: 489.  
 Remedies of seller. 10: 490, 492.  
 Waiver of tort to sue in assumpsit. 10:  
     491.  
 Illustrations. 10: 492-494.

## ELECTION OF WIDOW.

When widow is required to elect. See Wills,  
     § 49.

## ELECTIONS.

EFFECT OF INELIGIBILITY OF CAN-  
 DIDATE RECEIVING MAJORITY OF  
 VOTES, § 1.

RIGHT TO VOTE FOR CANDIDATE  
 WHOSE NAME IS NOT PRINTED ON  
 THE BALLOT, § 2.

IRREGULARITIES WHICH WILL AVOID,  
     § 3.

NOTICE OR PROCLAMATION, § 4.

VOTING MACHINES, § 5.

AMBIGUITIES IN BALLOTS, § 6.

DISTINGUISHING MARKS WHICH IN-  
 VALIDATE BALLOTS, § 7.

BALLOTS AS EVIDENCE OF VOTE CAST,  
     § 8.

Mandamus to compel canvass of votes. See  
     Mandamus, § 4.

Review of proceedings of canvassing boards  
     on certiorari. See Certiorari, § 3.

### § 1. Effect of Ineligibility of Can- didate Receiving Majority of Votes.

Rule that there is an entire failure to  
     elect. 124: 211.

Rule that opposing candidate is elected.  
     124: 213.

Votes cast for person who is dead or not  
     in esse. 124: 218.

Effect on incumbent of vote cast for  
     ineligible successor. 124: 218.

Whether eligibility must exist at date  
     of election. 124: 218.

### § 2. Right to Vote for Candidate Whose Name is not Printed on the Ballot.

Review of decisions. 91: 682-684.

Power of legislature to regulate elec-  
     tions—General rule. 91: 685.

— Regulating printing of ballots.  
     91: 685.

— Denying right to vote for candi-  
     date of choice. 91: 686.

### § 3. Irregularities Which will Avoid.

In establishment of election districts.  
     90: 49.

Defects in appointment or qualification  
     of officers. 90: 50.

In registration of voters. 90: 57.

In nomination of candidates. 90: 60.

Calling election. 90: 61.

Petitioning for election. 90: 62.

Ordering election. 90: 63, 64.

Time and place of holding election. 90:  
     65.

Notice of election. 90: 67.

Conduct of election. 90: 72.

In registration or poll books. 90: 74.

In polling place. 90: 75.

In opening and closing polls. 90: 78.

In voting. 90: 80.

Effect of void precinct vote. 90: 86.

Effect of fraud. 90: 86.

Effect of bribery. 90: 87.

Illegal expenditure by candidate—In-  
     timidation and violence. 90:  
     88.

Count of votes. 90: 89.

— Presence or participation of third  
     persons. 90: 89.

Returns—Irregularities in. 90: 90.

— Failure to make. 90: 90.

— Misconduct of officers. 90: 90.

Failure to properly preserve ballots.  
     90: 91.

Canvass of returns. 90: 92.

### § 4. Notice or Proclamation.

General election. 120: 794.

Special election. 120: 795.

— To fill vacancy. 120: 795.

- Bond election. 120: 795.
- Local option election. 120: 795.

### § 5. Voting Machines.

Constitutionality of statutes authorizing the use of voting machines. 124: 573.

### § 6. Ambiguities in Ballots.

Evidence to explain. 10: 317.  
Rejection of ballot. 10: 321.

### § 7. Distinguishing Marks Which Invalidate Ballots.

Legal marks, the cross. 49: 240.  
Mandatory and directory statutes. 49: 240.  
What are distinguishing marks. 49: 243.  
— Marks on face of ballot. 49: 243;  
— Marks on outside of ballot. 49: 248.  
— Folding in unusual and striking manner. 49: 245.  
What are not distinguishing marks. 49: 246.  
— On face of ballot. 49: 246.  
— Marks on outside of ballot. 49: 248.  
Proof of intent to mark for identification. 49: 249.

### § 8. Ballots as Evidence of Vote Cast.

General principles. 11: 798, 799.  
To show for whom vote was cast. 11: 799.  
Construction of ballots. 11: 800.

## ELECTRICITY.

Poles and wires in streets as additional servitudes. See Municipal Corporations, § 26.  
Right of cities to manufacture electricity for use on streets and sale to citizens. See Municipal Corporations, § 1.  
Care required of electric companies to preserve human life. See Negligence, § 2.

### § 1. Duties and Liabilities of Electric Companies.

Degree of care required in general. 100: 516.  
— To persons in streets. 100: 518.  
— To patrons and customers. 100: 518.  
— Stipulation against liability. 100: 519.  
Insulation of wires. 100: 519.  
Notice of defects. 100: 523.

Repair of defects. 100: 523.  
Evidence of negligence. 100: 524.  
Proximate and remote cause of injury. 100: 526.  
Contributory and imputed negligence. 100: 527.  
Fallen and hanging wires. 100: 529.  
— Pulley wire from arc lamp. 100: 529.  
Parallel and intersecting wires. 100: 530.  
— Trolley wires. 100: 532.  
— Duty to guard. 100: 533.  
Corporations liable—Power company. 100: 534.  
— Vendor and purchaser of plant. 100: 534.  
Duty and liability of municipal corporations. 100: 535.  
Duty and liability of railroad companies. 100: 536.  
Duty and liability as employers. 100: 537.  
— Assumption of risk and contributory negligence. 100: 537.  
Duty and liability to trespassers and licensee. 100: 538.

### § 2. Poles and Wires in Streets and Highways and Across Private Property.

Erection of poles without authority. 28: 229.  
Power of legislature to authorize use of highway. 28: 229.  
— Without compensation to land owner. 28: 229.  
Cases holding abutting owner not entitled to compensation. 28: 230.  
Cases holding abutting owner entitled to compensation. 28: 233.  
Invasion of private property may be enjoined. 28: 235.  
Poles and wires are not additional servitude. 28: 235.

## ELEVATED RAILROADS.

As additional servitudes. See Railroads, § 3.  
Right to use streets. See Street Railroads, § 2.  
As additional servitudes. See Street Railroads, § 3.

## ELEVATORS.

Passenger elevators. See Carriers, §§ 55, 56.  
Care required of grain stored in. See Warehousemen, § 6.

## EMANCIPATION.

Of infants. See Infants, § 9.

## EMBANKMENTS.

Right to maintain embankments near boundary. See Adjoining Land Owners, § 2.

## EMBEZZLEMENT.

NATURE OF OFFENSE, § 1.  
WHO MAY COMMIT OFFENSE, § 2.  
PROPERTY SUBJECT TO EMBEZZLEMENT, § 3.  
POSSESSION OF PROPERTY, § 4.  
INTENT, § 5.  
CONVERSION, § 6.  
Disbarment of attorney for. See Attorney and Client, § 3.  
Of letters. See Postoffices, § 2.

### § 1. Nature of Offense.

Definition. 87: 21.  
Distinguished from larceny. 87: 21.

### § 2. Who may Commit Offense.

Servants. 87: 42.  
Agents. 87: 42.  
Partners. 87: 44.  
Bailees. 87: 44.  
Attorneys. 87: 45.  
Executors and administrators. 87: 45.  
Assignees in insolvency. 87: 45.  
Corporate officers. 87: 45.  
Bank officers. 87: 46.  
Public officers. 87: 46.

### § 3. Property Subject to Embezzlement.

In general. 87: 23.  
Ownership. 87: 24.  
— Proof of. 87: 24.  
— Where agent is entitled to commissions. 87: 25.

### § 4. Possession of Property.

Lawful possession. 87: 30.  
Distinguished from custody. 87: 31.  
— Possession of servants. 87: 33.  
By virtue of employment—Servant or agent. 87: 35.  
— Public officers. 87: 37.  
As trustees. 87: 37.  
Debtor and creditor. 87: 37.

### § 5. Intent.

Necessary element. 87: 26.  
Sufficiency of evidence of. 87: 27.  
Time of formation. 87: 29.

### § 6. Conversion.

What constitutes. 87: 38.  
Mere nonpayment of money. 87: 39.  
Refusal to pay or to surrender property. 87: 40.

Necessity for demand. 87: 40.  
By public officer. 87: 42.

## EMERGENCIES.

Acts in emergencies as negligence. See Negligence, § 3.

## EMINENT DOMAIN.

IN GENERAL, § 1.  
GENERAL NOTE, § 2.  
WHAT CONSTITUTES PUBLIC USE, § 3.  
USES FOR WHICH RIGHT CANNOT BE EXERCISED, § 4.  
TAKING, § 5.  
NECESSITY FOR TAKING, § 6.  
CONDEMNATION OF PROPERTY OF CORPORATION, § 7.  
CONDEMNATION OF RAILROAD RIGHT OF WAY, § 8.  
RIGHT OF COURTS TO QUESTION EXISTENCE OF PUBLIC USE—IN DETERMINING VALIDITY OF LEGISLATIVE EXERCISE OF POWER, § 9.  
— WHERE LEGISLATURE HAS DELEGATED ITS POWER, § 10.  
WHAT CONSTITUTES DAMAGE, § 11.  
"DAMAGED," AS USED IN CONSTITUTION, DEFINED, § 12.  
ELEMENTS OF DAMAGE FOR PROPERTY TAKEN, § 13.  
ELEMENTS OF DAMAGE OTHER THAN LOSS OF PROPERTY TAKEN, § 14.  
EVIDENCE, § 15.  
TESTIMONY OF EXPERTS, § 16.

### § 1. In General.

Nature of the right. 102: 811.  
Distinguished from taxing and police powers. 102: 812.  
When the right may be exercised. 102: 813.

### § 2. General Note.

Power to take private property for public purpose. 22: 48.  
Purposes for which property may be taken. 22: 49.  
What constitutes taking. 22: 49.  
Proceedings to condemn. 22: 49.  
Necessity for compensation. 22: 49.  
Measure of damages. 22: 50.  
Benefits accruing to owner. 22: 50.  
Testimony of experts as to value. 22: 50.  
Evidence of damages. 22: 51.  
Subsequent damages. 22: 51.  
Injury to property not taken. 22: 51.

### § 3. What Constitutes Public Use.

In general. 102: 813.  
Effect of local or changed conditions. 102: 817.  
Use enjoyed only by limited number. 102: 819.

Public use incidental to private use. 102: 819.

Decreased cost by exercise of eminent domain as constituting a public use. 102: 820.

Who determines what is a public use. 102: 821.

Uses which are not public. 102: 822-838.

#### § 4. Uses for Which Right cannot be Exercised.

Railroads—In general. 102: 822.

— Not carrying both freight and passengers. 102: 822.

— Branch lines and sidings. 102: 823.

— Use incidental to operation and economic management. 102: 825.

— Public or private roads or ways. 102: 826.

— Toll roads and bridges. 102: 828.

Mining, logging and agriculture. 102: 829, 912.

— Flumes and waterways. 102: 829, 912.

— Tramways. 102: 830.

Irrigation. 102: 831.

Drainage. 102: 832-834.

Navigation. 102: 835-914.

Dams and water powers. 102: 838.

Gristmills, oilmills, carding machines and woolen mills. 102: 838.

Public appropriation of grounds to preserve scenery and historic landmarks. 102: 838, 839.

#### § 5. Taking.

What constitutes in general. 16: 610.  
Overflowing property by erecting dam. 16: 610.

Deposit of stone on land. 16: 611.

Necessity for direct encroachment. 16: 612.

Building railroad on highway or street. 16: 612, 613.

Using street for market house. 16: 614.

Telegraph poles in street or highway. 16: 614.

Closing street. 16: 614.

Raising or lowering grade of street. 16: 615.

#### § 6. Necessity for Taking.

In general. 42: 406.

Public use as legislative or judicial question. 42: 406.

Right to disprove the necessity for taking. 42: 407.

#### § 7. Condemnation of Property of Corporations.

What property may be taken. 9: 137.

Effect of conferring exclusive privileges or franchises. 9: 140.

How legislative intent must be expressed. 9: 142.

Damages recoverable. 9: 144.

— Taking or crossing railroad track. 9: 146, 147.

#### § 8. Condemnation for Railroad Right of Way.

Persons entitled to compensation. 19: 458.

Measure of compensation. 19: 459.

Where only part of tract is taken. 19: 459.

Consideration of benefits accruing to land owner. 19: 460.

Speculative damages. 19: 460.

Opinion evidence of value of land taken. 19: 460.

#### § 9. Right of Courts to Question Existence of Public Use—In Determining Validity of Legislative Exercise of Power.

Necessity for existence of public use. 88: 927.

Under constitutional provisions. 88: 930.

Question is primarily legislative. 88: 932.

Question ultimately for the court. 88: 933.

Presumption favoring legislative determination. 88: 935.

Inquiry into motives and purposes of legislature. 88: 937.

Questioning expediency or propriety. 88: 939.

Necessity for taking particular parcel or certain amount of land. 88: 940-943.

#### § 10. — Where Legislature has Delegated Its Power.

As to nature of use. 88: 943.

Necessity for taking particular parcel or certain amount of land—In general. 88: 943.

— Under power to take necessary lands. 88: 944.



**§ 11. What Constitutes Damage.**

In general. 4: 399.  
 Illustrations. 4: 400.  
 Changing grade of street. 4: 401.  
 Consequential damages. 4: 401.  
 Construction of railroad on highway. 4: 402.  
 — Where fee is in public and where it is in abutting owner. 4: 402.  
 Destruction of property to prevent conflagration. 4: 403.  
 Taking property in time of war or extreme necessity. 4: 403.  
 Overflowing land or diverting stream. 4: 403.  
 Compensation for taking franchise. 4: 404.  
 Miscellaneous. 4: 404.

**§ 12. "Damaged" as Used in Constitution, Defined.**

Taking property. 109: 905.  
 Damage to property itself. 109: 906.  
 Damage to right appurtenant. 109: 907.  
 Damage in fact. 109: 907.  
 Damnum absque injuria. 109: 908.  
 Special and peculiar damage. 109: 909.  
 Nominal damage. 109: 909.  
 Personal injury. 109: 909.  
 Damage from taking of property. 109: 910.  
 Consideration of benefits. 109: 910.  
 Change in grade of street. 109: 911.  
 Obstruction of street or access to it. 109: 911.  
 Additional servitude on street. 109: 913.  
 Closing or vacating street or alley. 109: 913.  
 Erection of objectionable buildings. 109: 914.  
 Noise, smoke and cinders. 109: 914.  
 Pollution of waters by sewage. 109: 916.  
 Flooding land. 109: 916.  
 Removal of lateral support. 109: 917.

**§ 13. Elements of Damage for Property Taken.**

Classification. 85: 292.  
 General rule for determining damage. 85: 292.  
 Special estates diminishing or enhancing value. 85: 293.  
 Quality of land, mines, quarries, improvements. 85: 295.

Injury to or cost of removing buildings. 85: 96.  
 Rental value. 85: 296.  
 Adaptability of property taken for special purpose. 85: 297.  
 Incidental damage—Loss or damage to crops. 85: 298.  
 — Cost of removing personalty. 85: 298.  
 — Loss or injury to business. 85: 299.

**§ 14. Elements of Damage Other Than Loss of Property Taken.**

Damage to land disconnected with that taken. 85: 299.  
 Injury to riparian rights. 85: 301.  
 Flowage or overflow. 85: 302.  
 Loss of lateral support. 85: 303.  
 Cost of fencing. 85: 304.  
 Cost of crossings, gates and cattle-guards. 85: 305.  
 Matters causing inconvenience in use of land. 85: 306.  
 Danger from fire. 85: 308.  
 Danger to animals. 85: 309.  
 Noise, smoke, cinders and vapors. 85: 309.  
 Obstruction in ingress or egress. 85: 310.  
 Proximity of railroad to other structure. 85: 311.  
 Depreciation in value of property not taken. 85: 311.  
 Miscellaneous elements. 85: 313.

**§ 15. Evidence.**

Evidence of special value of property taken for public use. 124: 536-541.

**§ 16. Testimony of Experts.**

To determine value of property condemned. 26: 498, 505, 506.

**EMPLOYERS.**

See Master and Servant.

**EMPLOYER'S LIABILITY.**

Fidelity insurance. See Insurance, §§ 47-53.

**ENACTMENT OF STATUTES.**

Proof of. See Statutes, § 1.

**ENCROACHMENTS.**

See Obstruction.

On public highways. See Highways, § 4.

**ENCUMBRANCES.**

See Chattel Mortgages; Liens; Mechanics' Liens; Mortgages; Pledges.

**END LINES.**

Right to follow ore vein beyond end lines. See Mines and Minerals, § 5.  
Parallelism of end lines. See Mines and Minerals, § 5.

**ENGINEER.**

Certificate of engineer that contract has been performed. See Contracts, § 20.  
Right to exemptions as laborers. See Exemptions, § 3.

**ENGINE-HOUSE.**

As building subject to arson. See Arson, § 2.  
Right to acquire title to engine-house lot by adverse possession. See Adverse Possession, § 1.

**ENGINES.**

Use of public highway by traction engine. See Highways, § 9.

**EN MASSE.**

Execution sale en masse when debtor owns an undivided interest in land. See Execution, § 6.

**ENROLLED BILL.**

As proof of enactment of statute. See Statutes, § 1.

**ENTICING SPOUSE.**

See Alienation of Affections.

**ENTIRE CONTRACTS.**

Necessity for complete performance of. See Contracts, § 19.

**ENTIRE JUDGMENTS.**

Entirety of judgments void as to some of the parties. See Judgment, § 5.

**ENTIRE JURISDICTION.**

Of courts of equity. See Equity, § 3.

**ENTRAPMENT.**

Of criminal as defense. See Criminal Law, § 7.

**ENTRIES.**

In pass-books. See Banks and Banking, § 15.

**ENTRY.**

As element of burglary. See Burglary, § 3.  
Of judgment. See Judgment, § 9.  
Of transfer of stock on corporate books. See Corporations, § 23.  
Right of. See Forcible Entry and Detainer, § 1.

**ENVELOPES.**

As necessities of life. See Monopolies, § 1.

**EQUALITY.**

Of license tax. See Licenses, § 4.  
Of taxation. See Taxation, § 5.

**EQUESTRIANS.**

Law of the road governing. See Highways, § 9.

**EQUITABLE CONVERSION.**

By will. See Conversion, § 1.

**EQUITABLE ESTOPPEL.**

See Estoppel, § 1.

**EQUITABLE LIENS.**

See Liens, § 1.

**EQUITABLE MORTGAGES.**

See Mortgages, § 3.

**EQUITY.**

JURISDICTION TO PROTECT AND ENFORCE POLITICAL RIGHTS, § 1.

JURISDICTION TO PUT PARTY IN POSSESSION TO EFFECTUATE JUDGMENT, § 2.

EXCEPTIONS TO RULE THAT EQUITY RETAINS JURISDICTION TO ADMINISTER COMPLETE RELIEF, § 3.

IGNORANCE OR MISTAKE AS GROUND FOR RELIEF, § 4.

PARTIES IN PARI DELICTO, § 5.

BILLS OF PEACE TO PREVENT MULTIPLICITY OF SUITS, § 6.

LACHES AND STATE DEMANDS, § 7.

SAME, § 8.

COMMISSIONER'S SALE, § 9.

Jurisdiction to issue writ of assistance. See Assistance, Writ of, § 1.

Jurisdiction over associations. See Associations, § 4.

Proceedings against unknown owners. See Absentees, § 2.

Compelling issue or transfer of corporate stock. See Corporations, § 22.

Jurisdiction over citizens of another state or country. See Courts, § 1.

Equitable relief against forfeiture. See Forfeitures, § 1.

Jurisdiction to decree sale of infant's lands. See Infants, § 6.

Jurisdiction over trespass. See Injunction, § 4.

Equitable relief against judgment. See Judgment, § 20.

Jurisdiction to enforce lien. See Liens, § 1.

Equitable mortgages. See Mortgages, § 3.

No exeat as auxiliary remedy. See No Exeat, § 3.

Partition of property among co-owners. See Partition, §§ 1-7.

Suits to quiet title. See Quieting Title, §§ 1-3.

Reformation of instruments in equity. See Reformation of Instruments, §§ 1-6.

Enforcement of specific performance of contracts in equity. See Specific Performance, §§ 1-3.

Equitable subrogation. See Subrogation, § 2.  
 Jurisdiction over trespass. See Trespass, § 2.  
 Following trust funds. See Trusts, § 15.  
 Jurisdiction to construe wills. See Wills, § 29.

### § 1. Jurisdiction to Protect and Enforce Political Rights.

Directing conduct of public officers. 42: 234.  
 Elections. 42: 235.  
 Title to office. 42: 236.

### § 2. Jurisdiction to Put Party in Possession to Effectuate Judgment.

In general. 93: 154.  
 Persons subject to. 93: 157.  
 Writ of assistance. 93: 159.  
 — When writ will issue. 93: 161.  
 — Against whom writ will issue. 93: 163.

### § 3. Exceptions to Rule That Equity Retains Jurisdiction to Administer Complete Relief.

When relief demanded is denied. 116: 877.  
 When pleadings are not broad enough to warrant general relief. 116: 880.  
 When relief sought is mere pretense for changing forum. 116: 880.  
 When jury trial is necessary. 116: 880.  
 In case of administration of estate of decedent. 116: 881.  
 When sole ground of relief is merely ancillary to the legal remedy. 116: 881.  
 In cases of bills of discovery. 116: 881.

### § 4. Ignorance or Mistake as Ground for Relief.

Ignorance defined and distinguished from mistake. 55: 494.  
 Ignorance of law and ignorance of fact. 55: 494, 495.  
 Presumption against. 55: 496.  
 General rule as to ignorance or mistake of law. 55: 497.  
 Exceptions to the rule. 55: 502.  
 General rule as to ignorance or mistake of facts. 55: 504.  
 Mistake of law and fact combined. 55: 517.  
 In court proceedings. 55: 506.  
 Effect of overruled decision. 55: 506, 507.  
 Bonds and warrants. 55: 507.

Compromise, release and discharge. 55: 507.

Contracts. 55: 512.  
 Criminal cases and torts. 55: 514.  
 Deeds. 55: 514.  
 Limitations of actions. 55: 515.  
 Money paid under mistake. 55: 517.  
 Mutual mistake. 55: 518.  
 Other illustrations. 55: 518.  
 Pleadings. 55: 519.  
 Placing party in statu quo. 55: 519.  
 Equitable remedies available. 55: 520.

### § 5. Parties in Pari Delicto.

Refusal of aid to parties in pari delicto. 3: 728-745.  
 When relief may be awarded to parties in pari delicto. 7: 587, 588.

### § 6. Bills of Peace to Prevent Multiplicity of Suits.

Review of former notes. 131: 30.  
 Introductory remarks. 131: 31.  
 Pomeroy's doctrine. 131: 32.  
 When community of interest in the subject matter of the controversy is held necessary to justify equitable interference on the ground of preventing a multiplicity of suits. 131: 42.

### § 7. Laches and Stale Demands.

Laches and acquiescence distinguished. 2: 795.  
 Distinction between executory and executed interests. 2: 796.  
 Specific performance. 2: 796.  
 Members of same family. 2: 797.  
 Guardian and ward. 2: 797.  
 Judgments. 2: 798.  
 Judicial and execution sales. 2: 798.  
 Claims in favor of the government. 2: 798.  
 Trusts. 2: 799.  
 Fraud. 2: 801.  
 Knowledge essential. 2: 802.  
 Accounts. 2: 802.  
 Injunction. 2: 802.  
 Patents. 2: 803.  
 Demands regarding lands. 2: 803.  
 Deeds and agreements to convey. 2: 804.  
 Admiralty. 2: 804.  
 Excuses. 2: 805.  
 — Infancy and coverture. 2: 806.  
 Pleading—Demurrer. 2: 807.

### § 8. Same.

Equity aids the vigilant. 23: 148.

Adoption of statute of limitations. 23: 149.

Laches as bar to equitable relief. 23: 149, 150.

### § 9. Commissioner's Sale.

Right of commissioners in chancery to purchase at their own sales. 136: 794.

## EQUITY OF REDEMPTION.

As inseparable part of mortgage. See Mortgages, § 2.

Persons entitled to. See Mortgages, § 22.

Waiver or release of. See Mortgages, § 23.

## ERASURES.

On written instruments. See Alteration of Instruments, § 2.

## EROSION.

Of islands in navigable waters. See Navigable Waters, § 7.

## ERRONEOUS DECISION.

Force and effect of. See Courts, § 6.

## ERROR, WRIT OF.

See Appeal and Error.

## ESCAPE.

Burning jail to escape as arson. See Arson, § 1.

Duty of carrier to prevent escape of cattle from stock cars or pens. See Carriers, § 29.

### § 1. Liability for Permitting.

Liability of sheriff or other officer for permitting. 95: 115-117.

## ESCAPE OF GAS.

Care required to prevent. See Gas, 1.

## ESCHEAT.

Acquisition of title to escheated lands by adverse possession. See Adverse Possession, § 1.

Proceedings against unknown owners. See Absentees, § 2.

## ESCROWS.

IN GENERAL, § 1.

WHAT MAY BE DEPOSITED, § 2.

CONDITIONS, § 3.

DEPOSITARIES, § 4.

DELIVERY BY DEPOSITARY, § 5.

DELIVERY AND REDELIVERY TO DEPOSITARY, § 6.

WHEN INSTRUMENT BECOMES OPERATIVE, § 7.

Delivery of promissory note contrary to terms of escrow. See Bills and Notes, § 3.

Delivery of deed in escrow. See Deeds, § 8.

### § 1. In General.

Defined. 130: 911.

Creation and requisites. 130: 912.

Intention of parties. 130: 917.

Dominion or control of depositor. 130: 919.

Death of parties or either of them. 130: 920.

Pleading, practice, venue, etc. 130: 973.

### § 2. What may be Deposited.

All written obligations. 130: 922.

Promissory notes. 130: 922.

Contracts of purchase and chattel mortgages. 130: 922.

Bonds of constables. 130: 923.

Contract of guaranty. 130: 923.

### § 3. Conditions.

How expressed. 130: 950.

Where effectual to create an escrow. 130: 951.

Where ineffectual. 130: 955.

Performance of conditions and occurrence of contingencies. 130: 958.

### § 4. Depositaries.

Functions and general character. 130: 923.

The grantee. 130: 923.

The attorney or agent of the parties. 130: 925.

The payee of notes. 130: 927.

The obligee of a bond. 130: 929.

The principal obligor. 130: 930.

Co-obligor. 130: 931.

Grantee in bill of sale. 130: 932.

Promisee or payee in simple contracts. 130: 932.

Involuntary depositor. 130: 932.

Miscellaneous. 130: 932.

Knowledge of condition by depositary and others. 130: 932.

Liabilities. 130: 949.

### § 5. Delivery by Depositary.

In general. 130: 940.

Authorized. 130: 943.

Unauthorized. 130: 943.

Redelivery. 130: 948.

Wrongful procurement of instrument. 130: 970.

Ratification of wrongful delivery. 130: 971.

**§ 6. Delivery and Redelivery to Depository.**

In general. 130: 933.  
Operation and effect. 130: 935.  
Revocation of delivery. 130: 939.  
Redelivery. 130: 948.

**§ 7. When Instrument Becomes Operative.**

Upon the happening of the event or performance of the condition. 130: 965.  
From actual delivery by depository. 130: 967.  
Relation back to first delivery. 130: 968.

**ESTATES.**

See Courtesy; Dower; Life Estates.  
Acquired by completed location of mine. See Mines and Minerals, § 1.  
Merger of mortgage in other estates. See Mortgages, § 11.  
In remainder. See Remainders, §§ 1-3.  
Created by will. See Wills, § 36.

**§ 1. Merger of Estates.**

Merger at law. 99: 153.  
Life estate into remainder or reversion. 99: 153.  
Dower. 99: 156.  
Trust estate. 99: 157.  
In equity. 99: 158.  
— Intent governs. 99: 159.  
Mortgage. 99: 160.

**ESTATES OF DECEDENTS.**

See Courtesy; Decent; Dower; Executors and Administrators; Wills.

**ESTATES-TAIL.**

**§ 1. General Note.**

Nature of estates-tail. 7: 428.  
Words of limitation necessary to create. 7: 429.  
In what states they are permissible. 7: 430, 432.  
Means of alienation. 7: 431.  
Forbidden in Kentucky. 7: 432.

**ESTOPPEL.**

**IN GENERAL, § 1.**

APPLICATION TO GOVERNMENTAL BODIES, § 2.

CLAIMANTS UNDER COMMON SOURCE OF TITLE, § 3.  
PLEADING, § 4.

To question validity of adoption. See Adoption, § 1.

By acquiescence in boundary agreements. See Boundaries, § 2.

To deny corporate existence. See Corporations, § 1.

To allege invalidity of overissued stock. See Corporations, § 11.

Of county to contest illegal claims or expenditures. See Counties, § 6.

To plead former jeopardy. See Criminal Law, § 20.

By quitclaim deed. See Deeds, § 14.

To question void or voidable decree of divorce. See Divorce, § 15.

To plead statute of frauds. See Frauds, Statute of, § 11.

By deed or mortgage of homestead by one spouse only. See Homestead, § 8.

Against married women. See Husband and Wife, § 16.

Persons estopped or concluded by judgment. See Judgment, §§ 34-43.

Of tenant to dispute title of landlord. See Landlord and Tenant, §§ 5-10.

To revoke parol license to use land. See Licenses, § 6.

To plead statute of limitations. See Limitation of Actions, §§ 9, 14.

Of mine locator to deny discovery. See Mines and Minerals, § 3.

Of city to contest illegal claims and expenditures. See Municipal Corporations, § 39.

To assert vendor's lien. See Vendor and Purchaser, § 9.

To contest will. See Wills, § 3.

**§ 1. In General.**

Equitable estoppel defined. 134: 172.

Fraud as basis of equitable estoppel. 134: 173.

Injury or prejudice to other party as element. 134: 177.

Change of situation in reliance on representations as element. 134: 176.

By acquiescence. 134: 1024.

To plead statute of frauds. 134: 172-177.

Estoppel of grantor to claim after-acquired title. 41: 722, 723.

To assert ownership of corporate stock. 136: 1038.

**§ 2. Application to Governmental Bodies.**

In general. 137: 354.

Counties. 137: 358.

Cities. 137: 358.

Distinction between counties and cities. 137: 360.

Illustrations of doctrine as applied to counties. 137: 361.

Illustrations of doctrine as applied to cities. 137: 367.

### § 3. Claimants Under Common Source of Title.

Presumption in favor of title. 47: 75.  
 Estoppel to question title. 47: 75.  
 Estoppel of cotenants. 47: 78.

### § 4. Pleading.

Necessity for pleading. 27: 344.  
 Where no opportunity has been given to plead. 27: 345.  
 Effect of failure to plead. 27: 346.  
 Pleading estoppel by conduct. 27: 348.  
 Form of plea. 27: 249.

### ESTOVERS.

Right of tenant to. See Landlord and Tenant, § 33.

### ESTRAYS.

General features of estray laws in the United States. See Animals, § 4.

### EVIDENCE.

JUDICIAL NOTICE, § 1.  
 — FOREIGN LAW, § 2.  
 — LOCALITIES AND BOUNDARIES, § 3.  
 RULES OF EVIDENCE, § 4.  
 PRESUMPTIONS, § 5.  
 — VALIDITY OF STATUTES CREATING, § 6.  
 BURDEN OF PROOF, § 7.  
 EVIDENCE WRONGFULLY OBTAINED, § 8.  
 BELIEF, MOTIVE OR INTENT OF WITNESS, § 9.  
 ADMISSIBILITY OF TELEPHONE CONVERSATION, § 10.  
 TO PROVE AGE OF HUMAN BEING, § 11.  
 EXPERIMENTS AS EVIDENCE, §§ 12, 13.  
 DECLARATIONS OF FORMER OWNER, § 14.  
 DECLARATIONS AND ACTS OF AGENTS, § 15.  
 ADMISSIBILITY OF DECLARATIONS AFTER DEATH OF DECLARANT AGAINST PERSONS NOT PRIVIES, § 16.  
 DOCUMENTARY EVIDENCE, § 17.  
 BOOKS OTHER THAN ACCOUNT BOOKS, § 18.  
 ANCIENT DEEDS, § 19.  
 ACCOUNT BOOKS, § 20.  
 RETURNS OF OFFICERS TO WRITS AND PROCESS, § 21.  
 PHOTOGRAPHS, § 22.  
 PHOTOGRAPHS AND X-RAY PICTURES, § 23.  
 TELEGRAMS, § 24.  
 PAROL OR EXTRINSIC EVIDENCE, § 25.  
 — TO SHOW WARRANTY, § 26.  
 — TO SHOW CONDITIONS IN BILLS AND NOTES, § 27.  
 — TO EXPLAIN MEANING OF WORDS USED IN WRITING, § 28.  
 — SUBSEQUENT PAROL AGREEMENT TO VARY WRITING, § 29.

EVIDENCE GIVEN AT FORMER TRIAL, § 30.

— CORONER'S INQUEST, § 31.  
 STENOGRAPHER'S NOTES AS EVIDENCE, § 32.

CIRCUMSTANTIAL EVIDENCE, § 33.

Altered instrument as evidence. See Alteration of Instruments, § 5.

Presumptions arising from alteration of instrument. See Alteration of Instruments, § 6.

Presumption of correctness of account stated. See Account Stated, § 1.

Facts showing abandonment of property or right. See Abandonment, § 3.

Of illegitimacy. See Bastards, §§ 2-4.

Parol evidence to explain indorsement of promissory note. See Bills and Notes, § 21.

Of boundary. See Boundaries, §§ 1, 4.

Validity of contract to furnish evidence. See Contracts, § 9.

In criminal cases. See Criminal Law, §§ 21-40.

Proof of filing of paper. See Courts, § 8.

To show jurisdiction. See Courts, § 4.

Presumption of death and survivorship. See Death, §§ 1, 2.

In action for injury resulting in death. See Death, § 6.

Power to compel production of books and papers. See Discovery, § 1.

Power to compel party to submit to physical examination. See Discovery, § 1.

Of value of property taken for public use. See Eminent Domain, §§ 15, 16.

Of fraud in execution of conveyance. See Fraudulent Conveyances, § 10.

To establish gift causa mortis. See Gifts, § 3.

In homicide cases. See Homicide, §§ 13-22.

Of contents of lost instrument. See Lost Instruments, § 2.

In action for malicious prosecution. See Malicious Prosecution, §§ 1, 2.

Mandamus to review rulings on. See Mandamus, § 6.

Presumption in favor of validity of second marriage. See Marriage, § 7.

Of negligence of master. See Master and Servant, § 30.

Of abandonment or forfeiture of mining claim. See Mines and Minerals, § 10.

Of negligence. See Negligence, § 17.

Presumption of due care. See Negligence, § 19.

Presumption of negligence from accident. See Negligence, §§ 20, 21.

In actions against public officers. See Officers, § 30.

Presumption of payment from lapse of time. See Payment, § 1.

Of application of payments. See Payment, § 15.

In action for reformation. See Reformation of Instruments, § 6.

Seizure of private books and papers. See Searches and Seizures, § 2.

Of enactment of statute. See Statutes, § 1.

Of laws of another state or a foreign country. See Statute, § 11.

Presumption as to existence of common law in another state or country and as to similarity of law in another country. See Statutes, § 11.

Law of the telephone as applied to evidence.  
See Telegraphs and Telephones, § 9.

Objections to evidence. See Trial, § 7.

Absence of judge during taking of evidence.  
See Trial, § 1.

Instructions relating to evidence invading  
province of jury. See Trial, § 5.

Of subscribing witnesses supporting or op-  
posing will. See Wills, § 6.

Proof of lost or destroyed will. See Wills,  
§§ 26-28.

To aid construction of will. See Wills, § 30.

Presumption of undue influence of testator.  
See Wills, § 16.

Power of court to limit number of witnesses.  
See Witnesses, § 1.

Subpoena, competency and examination of  
witnesses and impeachment. See Wit-  
nesses, §§ 2-14.

Evidence admissible to impeach witness. See  
Witnesses, § 14.

### § 1. Judicial Notice.

Facts judicially decided. 124: 22.

Facts within personal knowledge of  
judge. 124: 23.

Matters of common knowledge. 124:  
24.

Course and laws of nature. 124: 27.

Qualities and properties of matter.  
124: 28.

Operation of natural forces. 124: 30.

Scientific facts and principles. 124:  
31.

Geographical facts. 124: 32.

— Surveys and location of railroads.  
124: 33.

— Location of county seats, coun-  
ties, cities and towns. 124: 34.

— Distance, rivers, lakes and navi-  
gability. 124: 35.

Historical facts. 124: 35.

Circulating medium. 124: 40.

Statistical facts. 124: 40.

Phenomena of animal and vegetable  
life. 124: 41.

Human life, health, habits and acts.  
124: 42.

Language, words, phrases and abbrevi-  
ations. 124: 45.

Time, days and dates. 124: 48.

Weights, measures and values. 124:  
50.

Art and skill. 124: 51.

Management and conduct of occupa-  
tions. 124: 52.

Customs and usages. 124: 54.

Corporations, associations and their  
members. 124: 57.

Powers and acts of corporations and  
their members and servants.  
124: 58.

### § 2. — Foreign Law.

Laws of sister state or foreign country.  
113: 870-874.

### § 3. — Localities and Boundaries.

Geographical features, topography and  
history. 82: 439.

Islands and rivers. 82: 440, 446.

Territorial extent of jurisdiction. 82:  
440.

Government surveys. 82: 440.

Railroads. 82: 441.

Counties and county seats. 82: 442.

Cities and towns. 82: 443.

Streets, blocks and lots. 82: 444.

Boundaries. 82: 445.

Navigable waters and navigability.  
82: 446.

Distance. 82: 447.

### § 4. Rules of Evidence.

Right to insert stipulations in con-  
tracts making rules of evidence  
governing actions on the con-  
tract. 8: 921-924.

### § 5. Presumptions.

Presumption that services rendered by  
relative are gratuitous. 133:  
250.

### § 6. — Validity of Statutes Creat- ing.

Rebuttable presumptions. 36: 682.

In support of tax titles. 36: 683.

In prosecutions for illegal sale of li-  
quor. 36: 684.

In favor of protest of bill of exchange.  
36: 685.

In favor of reports of auditors. 36:  
685.

Conclusive presumptions. 36: 686, 688.

### § 7. Burden of Proof.

Definitions. 135: 765.

Ordinarily on party who asserts the  
burden of the issue. 16: 439.

Illustrations. 16: 439.

### § 8. Evidence Wrongfully Obtained.

Test of admissibility. 136: 135.

What constitutes wrongfully obtained  
evidence. 136: 136.

General rule. 136: 137.

Reasons of the rule. 136: 142.

Limitations on the rule, self-crimina-  
tion. 136: 143.

- Unreasonable search and seizure. 136: 153.
- Statutory restrictions. 136: 161.
- Trespass. 136: 161.
- Confessions and admissions. 136: 161, 162.
- Application of rule to civil cases. 136: 162.

### § 9. Belief, Motive or Intent of Witness.

- Right to testify to in general. 21: 314.
- Effect of such evidence. 21: 314.
- In action for malicious prosecution. 21: 316.
- In action to set aside fraudulent conveyance. 21: 316.
- In action involving fraud. 21: 316.
- To prove dedication. 21: 317.
- In actions on contracts. 21: 317.
- In action for trespass. 21: 318.

### § 10. Admissibility of Telephone Conversations.

- General rule. 127: 538.
- Applied in criminal cases. 127: 540.
- Determination of force and effect of conversation. 127: 540.
- Identification of talker—When essential. 127: 541.
- Presumption of correct connection. 127: 542.
- Sufficiency of proof of identity. 127: 551.
- Effect of conversation with unknown person. 127: 542.
- Burden of proof. 127: 553.
- Testimony of bystanders as to tenor of conversation. 127: 553.
- Testimony of person using telephone for another. 127: 554.
- Purposes for which telephone may be used. 127: 554-556.

### § 11. To Prove Age of Human Being.

- Testimony of persons whose age is questioned. 111: 584.
- Testimony of third person. 111: 584.
- Declarations of third person. 111: 585.
- Bible entries. 111: 586.
- Birth and baptism register. 111: 588.
- Miscellaneous records. 111: 588.
- Opinion evidence in general. 111: 589.
- Minors to whom liquor is sold. 111: 590.
- Rape cases. 111: 590.

### §§ 12, 13. Experiments as Evidence.

- General rule. 53: 375.
- Illustrations. 53: 379.
- Discretion of court. 53: 382.

### § 14. Declarations of Former Owner.

- Limitation of grounds of declarations. 134: 611.
- Declarations disparaging title—Before parting with possession. 134: 611.
- After parting with possession. 134: 616.
- Declarations as to boundaries—In general. 134: 618.
- Declarant must be disinterested. 134: 620.
- Declarations must be made ante litem motam. 134: 620.
- Must be made while on the ground and pointing out possession. 134: 621.
- Made after parting with the land. 134: 623.
- Death of declarant. 134: 625.

### § 15. Declarations and Acts of Agents.

- Competency of statements of agents. 131: 307-311.
- Fraudulent transactions. 131: 313.
- Agent since deceased. 131: 313.
- Sub or special agent. 131: 314.
- Agent examined as witness. 131: 314.
- Acts or conduct. 131: 314.
- Opinions of agent. 131: 317.
- Authority in certain cases. 131: 317.
- Special or limited authority. 131: 322.
- Architects and builders. 131: 323.
- Brokers, factors and carriers. 131: 325.
- Sheriff's deputies. 131: 326.
- Servants. 131: 327.
- Interpreters. 131: 330.
- Ship captains and pilots. 131: 330.
- Officers of banks and insurance companies. 131: 331, 332.
- Receivers. 131: 332.
- Bailees. 131: 332.
- Statements as to term of contract. 131: 333.
- Undisclosed agency. 131: 334.
- Admissions before or after transaction or event. 131: 335.



### § 16. Admissibility of Declarations After Death of Declarant Against Persons not Privies.

- General rule. 94: 673.  
 Prerequisites in general. 94: 674.  
 Declarant must be dead. 94: 674.  
 Declaration must be against interest. 94: 675.  
 Knowledge of declarant. 94: 676.  
 Declarant must have no motive of falsity. 94: 676.  
 Declarations as to matters of public interest. 94: 677.  
 Declarations as to private boundaries—  
   In general. 94: 678.  
   — Prerequisites to admission. 94: 679.  
   — Declarations must be made before suit brought. 94: 680.  
   — Knowledge and want of interest prerequisites. 94: 680.  
   — Declarations of deceased owners. 94: 681.  
   — Declarations of surveyors and chainmen. 94: 682.

### § 17. Documentary Evidence.

- Corporate seal as evidence. 64: 260-265.  
 Effect as evidence of record of meetings of governmental bodies such as towns, cities and school districts. 13: 550-553.

### § 18. Books Other Than Account Books.

- Entries made in regular course of business. 125: 842.  
 Books and dates of the general nature of books of account. 125: 848.  
   — Time-books and pay-rolls. 125: 849.  
   — Material book. 125: 851.  
   — Check-books, note registers and inventories. 125: 852.  
 Books containing memoranda of daily transactions. 125: 853.  
 Books and reports used as part of a system of conducting business. 125: 854.  
   — Rules governing servants. 125: 855.  
   — Reports of employees, train sheets and herd-books. 125: 856.  
 By-laws and minute-books of corporations and associations. 125: 857.

### § 19. Ancient Deeds.

- What constitutes. 9: 302.  
 Necessity for possession under the deed. 9: 303.  
 Documents admitted as ancient deeds. 9: 304.  
 Miscellaneous. 9: 304.

### § 20. Account Books.

- General rule, its history and origin. 138: 441.  
 Effect of statute permitting litigants to testify. 138: 444.  
 Effect of statutes relating to admissibility. 138: 445.  
 When admissibility of books precludes oral evidence. 138: 445.  
 General requisites to admissibility. 138: 445.  
 Business or occupation to which books must relate. 138: 446.  
 Necessity to show delivery of goods or performance of service. 138: 446.  
 Charges must be contemporaneous with transaction. 138: 446.  
 Correctness of books must be shown. 138: 448.  
 Charges must relate to occupation of party. 138: 450.  
 Entries must be original and made in due course. 138: 451.  
 Entries must be complete. 138: 459.  
 Manner of entering charges. 138: 460.  
 Alteration or mutilation. 138: 463.  
 Books of corporation and individual distinguished. 138: 464.  
 Purposes for which books are admissible. 138: 465.  
   — Cash items, payments and advances. 138: 466.  
   — Establishment of a negative. 138: 469.  
   — Special arguments. 138: 470.  
   — Corroboration or contradiction of other evidence. 138: 472.  
   — As part of *res gestae*. 138: 472.  
   — As admission against interest. 138: 474.  
   — As memoranda to refresh memory. 138: 475.

### § 21. Returns of Officers to Writs and Process.

- What the return should show. 129: 848.

Facts of which the return affords evidence. 129: 849.  
 Admissibility where the return contains recitals that it should not contain. 129: 854.  
 Admissibility to show excuse for failure of officer to serve writ or process. 129: 856.  
 Admissibility of return as a predicate for the former testimony of an absent or deceased witness. 129: 856.

## § 22. Photographs.

In general. 75: 468.  
 Physical condition of injured person. 75: 473.  
 Paternity. 75: 474.  
 Identification of persons. 75: 475.  
 Handwriting and signatures. 75: 477.

## § 23. Photographs and X-ray Pictures.

Admissibility in general. 114: 438.  
 Preliminary proof of correctness—Necessity. 114: 439.  
 — Sufficiency. 114: 440.  
 Care and skill in taking. 114: 440.  
 Competency of persons testifying to correctness. 114: 441.  
 Discretion of court. 114: 441.  
 X-ray photographs. 114: 442.

## § 24. Telegrams.

General rule. 110: 764.  
 Preliminary requisites—In general. 110: 765.  
 — Authenticity of reply. 110: 766.  
 — Presumption from delivery of telegram to telegraph office. 110: 767.  
 Necessity for production of original telegram. 110: 768.  
 Parol evidence of contents of telegram.  
 — Showing loss of original as foundation. 110: 768.  
 — Sufficiency of foundation. 110: 768.  
 — Notice to produce original. 110: 769.  
 In criminal cases. 110: 770.  
 Telegram as evidence of written notice in legal proceedings. 110: 771.

## § 25. Parol or Extrinsic Evidence.

Receipts. 11: 393.  
 Contemporaneous oral agreements. 11: 394, 893.

To vary deed. 11: 844.  
 Circumstances and conduct of parties. 11: 894.  
 As to execution of contract. 11: 394.  
 Contemporaneous written agreement. 11: 394, 894.  
 Antecedent agreements. 11: 394, 894.  
 Subsequent agreements. 11: 394, 894.

## § 26. — To Show Warranty.

Outside of simple contract. 5: 197.  
 Outside of deed or other contract relating to land. 5: 199.

## § 27. — To Show Conditions in Bills and Notes.

General rule and exceptions. 128: 611.  
 Conditions precedent. 128: 611.  
 Illustrations showing how exceptional rule has been applied—As to makers. 128: 613.  
 — As to indorsers, sureties and guarantors. 128: 623.  
 — As to acceptors. 128: 627.  
 — Concerning payment of note. 128: 629.  
 Parol evidence to vary contract of indorsement. 7: 366.  
 Parol to explain indorsement of commercial paper. 134: 994.  
 Parol evidence of collateral agreement postponing effect of promissory note. 132: 746.

## § 28. — To Explain Meaning of Words Used in Writing.

Discussion of general principles. 122: 546.  
 Oral evidence of usage or custom. 122: 548-550.  
 Ambiguity when usage or custom is not involved. 122: 554.  
 "About," "more or less" and words of similar import. 122: 555.  
 Miscellaneous cases. 122: 557.

## § 29. — Subsequent Parol Agreement to Vary Writing.

General principles. 56: 659.  
 Assignments and bonds. 56: 663.  
 Contracts of carriage. 56: 663.  
 Changing time of performance. 56: 664.  
 Consideration and conditions. 56: 664.  
 Contracts of employment. 56: 666.  
 Contracts of insurance. 56: 666.

Leases. 56: 667.  
 Mortgages. 56: 667.  
 Promissory notes. 56: 668.  
 Specialties. 56: 669.  
 Special performance barred by oral waiver. 56: 670.  
 Statute of frauds. 56: 671.  
 Statute of limitations. 56: 672.  
 Waiver, abandonment or discharge of contract. 56: 672.  
 — Effect on right to specific performance. 56: 670.  
 Practice and proof. 56: 668.

### § 30. Evidence Given at Former Trial.

Grounds and requisites of admission—  
 Death of witness. 91: 193.  
 — Incapacity of witness. 91: 194.  
 — Absence of witness. 91: 195.  
 — Interest of witness. 91: 197.  
 In other actions or proceedings. 91: 198.  
 — Identity of issues and subject matter. 91: 198.  
 — Identity of parties. 91: 199.  
 Opportunity to cross-examine. 91: 200.  
 Nature of proceeding. 91: 201.  
 Preliminary evidence—Identity of parties and issues. 91: 202.  
 — Showing death, illness or absence of witness. 91: 203.  
 — Qualifications of witnesses. 91: 204.  
 Mode of proof—Notes of testimony. 91: 206.  
 — Bill of exceptions or brief of evidence. 91: 207.

### § 31. — Coroner's Inquest.

In actions on insurance policies. 95: 763.  
 In personal injury cases. 95: 765.  
 Inquest based on irregular verdict. 95: 765.

### § 32. Stenographer's Notes as Evidence.

Nature of notes. 81: 358.  
 No general rule. 81: 359.  
 Statutory provisions. 81: 359.  
 Proof of testimony of absent or deceased witness. 81: 360.  
 Impeachment or contradiction of witness. 81: 363.  
 Stenographers as witnesses. 81: 364.  
 Notes as depositions. 81: 366.

### § 33. Circumstantial Evidence.

Admissibility. 97: 802.  
 Sufficiency. 97: 802.

### EXAMINATION.

Of jurors. See Jury, § 4.  
 Of witnesses. See Witnesses.

### EXCAVATION.

Right to excavate one's land, liability for negligent excavation and duty to give notice of intent to excavate. See Adjoining Land Owners, § 1.  
 In highways destroying lateral support. See Highways, § 4.  
 Enjoining excavations. See Injunction, § 4.

### EXCEPTIONS.

In insurance policies. See Insurance, § 10.

### EXCESSIVE BAGGAGE.

See Carriers, § 58.

### EXCESSIVE CLAIM.

As ground for dissolving attachment. See Attachment, § 6.

### EXCESSIVE PUNISHMENT.

Of school pupils. See Schools and School Districts, § 1.

### EXCHANGE.

Bills of exchange. See Bills and Notes.

### EXCHANGE OF PROPERTY.

Damages for fraud in inducing. See Damages, § 5.  
 Applicability of statute of frauds to exchange of lands. See Frauds, Statute of, § 8.  
 Distinguished from sale. See Sales, § 1.

### § 1. In General.

Distinguished from sale. 94: 227.  
 Damages for breach of warranty of title on exchange of lands. 24: 268.  
 Personalty of infant. 18: 595.

### EXCHANGES.

Jurisdiction of equity courts over. See Association, § 4.  
 Right of officers of board of trade to prosecute appeals. See Appeal and Error, § 2.  
 Exemption of seat in stock exchange. See Exemptions, § 7.  
 Stock-jobbing statutes. See Gaming, § 2.

### EXCURSION TICKETS.

Status of person riding on. See Carriers, § 38.

### EXCUSABLE DELAYS.

Of criminal trial. See Criminal Law, § 41.

**EXCUSES.**

For nonperformance of assessment work on mining claim. See *Mines and Minerals*, § 9.

**EXCUSING JURORS.**

Grounds for. See *Jury*, § 5.

**EXECUTION.**

ISSUANCE OF WRIT, § 1.  
 AMENDMENT OF WRIT, § 2.  
 PROPERTY SUBJECT TO LEVY, § 3.  
 STAY OF EXECUTION OTHERWISE THAN BY STATUTORY PROCEEDING, § 4.  
 VACATING SATISFACTION, § 5.  
 SALE, § 6.  
 — VALIDITY OF SALE UNDER SATISFIED JUDGMENT, § 7.  
 — INJUNCTION AGAINST SALE OF PERSONALTY, § 8.  
 — PERSONS INCAPACITATED FROM PURCHASING, § 9.  
 — TITLE ACQUIRED BY CREDITOR PURCHASING AT SALE, § 10.  
 — VACATION, § 11.  
 — WHO MAY REDEEM, § 12.  
 — EFFECT OF REDEMPTION, § 13.

Relief against execution for grounds arising after its entry by independent proceeding. See *Audita Quereia*, § 1.

Creditor's bill to enforce. See *Creditors' Suit*, § 1.

Of deed. See *Deeds*, § 4.

Effect of lapse of time on right to issue. See *Limitation of Actions*, § 5.

Earnings of public officers exempt from. See *Officers*, § 11.

Right of purchaser at invalid execution sale to subrogation. See *Subrogation*, § 4.

Indemnity to officer before levy. See *Sheriffs and Constables*, § 2.

**§ 1. Issuance of Writ.**

Cannot issue in favor of dissolved corporation. 134: 312.

Effect of lapse of time on right to issue. 133: 70.

**§ 2. Amendment of Writ.**

Liberal exercise of power. 101: 551.

Practice to procure. 101: 552.

Power extends to all matters of form. 101: 553.

Direction to officer. 101: 554.

Omission of words of command. 101: 555.

Failure to conform to judgment. 101: 555.

Designation of return day. 101: 556.

Attestation and seal. 101: 556, 558.

Time to make. 101: 558.

Effect of amending or not amending. 101: 559, 561.

Persons against whom amendments may be made. 101: 561.

**§ 3. Property Subject to Levy.**

Property in hands of receiver. 2: 403, 404.

**§ 4. Stay of Execution Otherwise Than by Statutory Proceedings.**

General rule. 127: 707.

Permanent stays—When judgment is void. 127: 708.

— When judgment is satisfied. 127: 708.

— Bar of proceedings by bankruptcy or like proceedings. 127: 709.

— For equitable reasons. 127: 709.

Temporary stays—General rule. 127: 710.

— Pending proceedings to determine right to execution of the amount collectible. 127: 710.

— In aid of offsets. 127: 711.

— In aid of garnishment. 127: 711.

— Arbitrary grant. 127: 711.

What court may direct. 127: 712.

Not an appellate or correctory proceeding. 127: 713.

Proceedings to obtain. 127: 713.

Effect of order for stay and mode of avoiding it. 127: 714.

**§ 5. Vacating Satisfaction.**

Vacating satisfaction of execution because of failure of title of purchaser. 134: 35.

**§ 6. Sale.**

Validity of sale en masse when judgment defendant owns an undivided interest in the land. 23: 651.

Rights of purchaser at execution sale on failure of title. 134: 37-40.

**§ 7. — Validity of Sale Under Satisfied Judgment.**

General principles. 137: 1091.

Under judgment satisfied of record—Complete satisfaction. 137: 1092.

— When costs have not been paid. 137: 1093.

Under judgment not satisfied of record. By payment of the judgment. 137: 1094.

— By operation of law. 137: 1096.

Where sale more than satisfies judgment. 137: 1098.

For interest on satisfied judgment. 137: 1099.

For sheriff's fees on execution. 137: 1099.

**§ 8. — Injunction Against Sale of Personalty.**

In general. 111: 97.  
Property in custody of law. 111: 99.  
Mortgaged chattels. 111: 99.  
Property of third person. 111: 99.  
Purchaser from debtor. 111: 99.  
Sale under subsequent execution. 111: 100.  
Prior encumbrance. 111: 100.  
Partnership property. 111: 100.  
Exempt property. 111: 101.

**§ 9. — Persons Incapacitated from Purchasing.**

Sheriffs, constables, commissioners and other officers authorized to make sales. 136: 789-793.  
Executors and administrators. 136: 794-802.  
Guardians. 136: 802-804.  
Judges. 136: 805.  
Trustees. 136: 805-809.  
Mortgagees. 136: 810.  
Pledgees. 136: 811.  
Assignees for creditors. 136: 812.  
Attorneys. 136: 813-816.  
Cotenants and others jointly interested. 136: 817.  
Husbands and wives. 136: 817.  
Parties to the action or proceeding. 136: 818.

**§ 10. — Title Acquired by Creditor Purchasing at Sale.**

Protection against unrecorded deed. 79: 947.  
Protection against secret equities. 79: 949.  
Reversal of judgment or irregularities. 79: 953.

**§ 11. — Vacation.**

By motion of court issuing writ. 7: 786.  
By independent suit in equity. 7: 786.  
Grounds for vacating. 7: 786.

**§ 12. — Who may Redeem.**

Right purely statutory. 21: 243.  
Judgment debtor. 21: 244.  
Assignee of judgment debtor. 21: 244.  
Judgment plaintiff or his assignee. 21: 245.

**§ 13. — Effect of Redemption.**

As reinstating lien of judgment for unpaid balance. 67: 510.  
Effect on liens other than the judgment. 67: 511.  
Right to make second sale for balance due. 67: 511.  
As extinguishing lien of judgment. 67: 513, 517.

**EXECUTORS AND ADMINISTRATORS.**

**RIGHT OF NONRESIDENT TO APPOINTMENT, § 1.**

**REMOVAL, § 2.**

**GROUND'S FOR REMOVAL, § 3.**

**WHO MAY APPLY FOR REMOVAL, § 4.**

**EXECUTOR DE SON TOET, § 5.**

**COLLATERAL ATTACK ON ACTING ADMINISTRATOR, § 6.**

**COMMON-LAW POWERS, § 7.**

**AUTHORITY OF ONE OF SEVERAL ADMINISTRATORS OR EXECUTORS, § 8.**

**CARE AND SKILL REQUIRED OF ADMINISTRATOR, § 9.**

**CONTROL OF ASSETS, § 10.**

**POWERS AND DUTIES AS TO PROPERTY OUT OF STATE, § 11.**

**DEPOSIT OF FUNDS OF ESTATE, § 12.**

**SUMMARY PROCEEDINGS TO DISCOVER AND RECOVER PROPERTY OF ESTATE, § 13.**

**LIABILITY TO THIRD PERSONS FOR NEGLIGENCE, § 14.**

**LIABILITY OF ESTATE FOR CONTRACTS AND TORTS OF EXECUTOR OR ADMINISTRATOR, § 15.**

**HEIRS' RIGHTS IN PERSONALTY OF ANCESTOR, § 16.**

**ALLOWANCE TO SURVIVING FAMILY, § 17.**

**STATEMENT OF CLAIM, § 18.**

**DEBTS DUE FROM EXECUTOR OR ADMINISTRATOR, § 19.**

**CAUSES FOR WHICH LEGISLATURE MAY AUTHORIZE SALE, § 20.**

**SALES UNDER ORDER OF COURT, § 21.**

**LACHES IN APPLYING FOR ORDER TO SELL LAND, § 22.**

**ADMINISTRATOR DE BONIS NON, § 23.**

— **APPOINTMENT, § 24.**

— **AUTHORITY AND DUTIES, § 25.**

— **ACTIONS BY, § 26.**

**Substitution of executor or administrator on death of party to civil action. See Abatement and Revival, § 4.**

**Deed of executor or administrator as color of title. See Adverse Possession, § 10.**

**Right of executor or administrator to appeal. See Appeal and Error, § 2.**

**Authority of executor or administrator to satisfy debt due estate by accepting something other than what might legally be demanded. See Accord and Satisfaction, § 6.**

**Succession of estates of intestates. See Descent, § 1.**

**Right of executor or administrator to sue for wrongful death. See Death, § 4.**

**Equitable relief against judgment of court having exclusive jurisdiction over estates of decedents. See Judgment, § 23.**

Validity and effect of judgment for or against decedents. See Judgment, §§ 3, 4.  
 Partition of estates of decedents for distribution. See Partition, § 3.  
 Place of taxation of property of decedents. See Taxation, § 13.  
 Inheritance taxes. See Taxation, §§ 21-27.  
 Who may execute power of sale in will. See Wills, § 44.  
 Abatement of legacies on deficiency of assets. See Wills, § 53.

### § 1. Right of Nonresident to Appointment.

Executors. 113: 562.  
 Revocation of letters on removal. 113: 563.  
 Administrators. 113: 563.  
 — Statutes regulating. 113: 564.  
 Nonresidence as ground for removal or revocation of letters. 113: 565.

### § 2. Removal.

Power to remove. 138: 526.  
 Coexecutors. 138: 550.  
 Effect of removal. 138: 553.

### § 3. Grounds for Removal.

In general. 138: 526-529.  
 Marriage of female incumbent. 138: 530.  
 Inebriety. 138: 530.  
 Illiteracy, improvidence or want of understanding. 138: 530.  
 Failure to give bond. 138: 531.  
 Failure to file inventory. 138: 532.  
 Failure to account. 138: 533.  
 Unsuitableness to discharge trust. 138: 534.  
 Adverse interest. 138: 535.  
 Refusal to prosecute suits. 138: 536.  
 Refusal to defend suits. 138: 537.  
 Incapacity, unfaithfulness or neglect. 138: 538.  
 Misconduct, mismanagement, waste or misappropriation of assets. 138: 540.  
 Hostility to heirs. 138: 543.  
 Absence from state or nonresidence. 138: 543.  
 Misconduct in sale of property. 138: 544.  
 Unauthorized investments and loans. 138: 546.  
 Payments of money. 138: 547.  
 Fraud or embezzlement. 138: 548.  
 Insolvency or poverty. 138: 550.  
 Coexecutors. 138: 550.

### § 4. Who may Apply for Removal.

In general. 138: 551.

Representatives of estate. 138: 552.  
 Widow, tutrix and heirs. 138: 552.  
 Legatees and devisees. 138: 552.  
 Public administrator. 138: 552.  
 Creditors of estate. 138: 552.  
 Strangers or volunteers. 138: 553.

### § 5. Executor De Son Tort.

Definition. 98: 193.  
 Abolition of office. 98: 190, 191.  
 What constitutes one an executor de son tort. 98: 193.  
 What acts do not constitute one executor de son tort—Acts of kindness or charity. 98: 196.  
 — Acts relating to real property. 98: 196.  
 — Husband in possession of wife's estate. 98: 197.  
 — Acts done as agent. 98: 197.  
 — Purchasing from executor de son tort. 98: 197.  
 — Intermeddling after issue of letters. 98: 198.  
 — Intermeddling with firm assets. 98: 198.  
 — Assignee under void deed of assignment. 98: 198.  
 Effect of subsequent grant of letters to. 98: 198.  
 Transferees of decedent. 98: 200.  
 Rights of executor. 98: 201.  
 — Setoff. 98: 201.  
 Liability of executor. 98: 202.  
 Widow as executor de son tort. 98: 204.

### § 6. Collateral Attack on Acting Administrator.

In general. 81: 535.  
 Jurisdictional facts. 81: 536.  
 Record shows no jurisdiction. 81: 536.  
 Effect of court having probate jurisdiction. 81: 536.  
 Recital of jurisdictional facts. 81: 538.  
 Where jurisdictional facts are recited. 81: 542.  
 Where officer has no authority to appoint. 81: 542.  
 Where statute fails to provide for estates of persons who died before its passage. 81: 542.  
 Judge disqualified to act. 81: 543.  
 Where testator is not dead. 81: 543.  
 Where there is no vacancy in office. 81: 546.

- Effect of nonresidence of decedent. 81: 548.  
 Effect of irregular procedure. 81: 552.  
 Premature appointment of administrator. 81: 554.  
 Effect of joining application on several estates. 81: 554.  
 Effect of failure to give bond. 81: 554.  
 Where no necessity for appointment. 81: 555.  
 Where no debts. 81: 555.  
 Where decedent left will. 81: 555.  
 Where decedent leaves no estate. 81: 557.  
 Administration after succession is closed. 81: 559.  
 Effect of lapse of time. 81: 559.  
 Competency of appointee to act as administrator. 81: 559.  
 Effect of fraud. 81: 560.  
 Attack on own appointment. 81: 561.
- § 7. Common-law Powers.**  
 In general. 78: 171.  
 Before probate. 78: 171.  
 Of administrator before issue of letters. 78: 172.  
 Support of decedent's family. 78: 173.  
 Over real property. 78: 175.  
 To buy and sell land. 78: 178.  
 Over personal estate. 78: 179.  
 Funeral expenses. 78: 183.  
 Mortgage or pledge of assets. 78: 184.  
 Payment of debts. 78: 185.  
 Arbitration of claims. 78: 187.  
 Compromise, composition and release. 78: 187.  
 Waiver of bar of limitations. 78: 188.  
 Collection of debts. 78: 190.  
 Purchasing the property of the estate. 78: 195.  
 Carrying on decedent's business. 78: 197.  
 Investments. 78: 197.  
 Executory contracts of decedent. 78: 200.  
 New contracts. 78: 201.  
 Employment of agents. 78: 203.  
 Payment of legacies. 78: 205.
- § 8. Authority of One of Several Administrators or Executors.**  
 Common-law authority. 127: 381.  
 Statutory powers. 127: 382.  
 Distinction between executors and administrators. 127: 383.  
 Collection of assets and management of estate. 127: 383.
- Confession of judgment. 127: 384.  
 — Allowance of claims. 127: 385.  
 — Arbitration and compromise. 127: 385.  
 — Execution of contracts. 127: 385.  
 — Waiver of statute of limitations. 127: 385.  
 Sales of personality. 127: 387.  
 Indorsement and transfer of commercial paper. 127: 388.  
 Sale of real estate. 127: 389.  
 Leases for years. 127: 390.  
 Pledge of notes or bonds. 127: 391.  
 Mortgages and their releases and payment. 127: 391.
- § 9. Care and Skill Required of Administrator.**  
 In general. 12: 311.  
 Collection of assets. 12: 312.  
 Investment of funds. 12: 313, 314.  
 Employment of agent or attorney. 12: 315.  
 Liability for loss of assets. 12: 316.
- § 10. Control of Assets.**  
 Nature of title of executor or administrator to lands of decedent. 136: 81.  
 Ejectment by executor or administrator. 136: 82.
- § 11. Powers and Duties as to Property Out of State.**  
 Extraterritorial authority of executors and administrators. 45: 665.  
 Title to and removal of property. 45: 665.  
 Duty of creditors and effect of laches. 45: 665.  
 Collection of debts. 45: 666.  
 Taking charge of property. 45: 668.  
 Inventory and accounting. 45: 669.  
 Gathering foreign assets. 45: 670.  
 Suits and assignments. 45: 671.
- § 12. Deposit of Funds of Estate.**  
 Duty to deposit. 98: 371.  
 Liability for loss through failure to deposit. 98: 371.  
 Liability for loss through failure of bank. 98: 372-375.  
 Liability for continuing deposit unnecessary time. 98: 375.  
 Liability for interest. 98: 376.

**§ 13. Summary Proceedings to Discover and Recover Property of Estate.**

Statutory provisions. 115: 208.  
 — Constitutionality. 115: 210.  
 Nature of proceedings. 115: 211.  
 Scope and object of proceedings in general. 115: 211.  
 — Collection of debts. 115: 213.  
 — Trial of title. 115: 214.  
 Claim of property. 115: 214.  
 Rights of persons examined. 115: 217.  
 Persons interested. 115: 217.  
 Proceedings against personal representatives. 115: 218.  
 Petition or affidavit and limitation of actions. 115: 218.

**§ 14. Liability to Third Persons for Negligence.**

General nature of liability. 133: 373.  
 Personal liability. 133: 373.  
 Pleading. 133: 375.

**§ 15. Liability of Estate for Contracts and Torts of Executor or Administrator.**

Relation of executor and administrator to the state. 52: 118.  
 Statutes increasing powers. 52: 119.  
 Not liable at law for contracts. 52: 119.  
 Employment of attorney. 52: 122.  
 Acknowledgment of outlawed debt. 52: 123.  
 Subrogation. 52: 128.  
 Torts and unauthorized acts. 52: 129.  
 Negligence. 52: 131.  
 Summary. 52: 134.

**§ 16. Heir's Rights in Personalty of Ancestor.**

Nature of executor's title. 112: 728.  
 Dispensing with administration—By agreement among heirs. 112: 729.  
 — In courts of equity. 112: 730.  
 Right of heir to possession. 112: 731.  
 Authority to confer lien upon attorney. 112: 731.  
 Right of action in general. 112: 731.  
 In case of misconduct of executor. 112: 732.  
 When there are no debts and no administration. 112: 732.  
 After death of administrator. 112: 734.  
 After close of administration. 112: 735.

**§ 17. Allowance to Surviving Family.**

Effect of order setting apart probate homestead to widow. 129: 794.

**§ 18. Statement of Claim.**

General requisites. 130: 311.  
 Necessity for following rules of pleading. 130: 311.  
 Necessity for writing. 130: 313.  
 Itemizing accounts. 130: 313.  
 Stating claims for services. 130: 314.  
 Waiver of insufficiency of statement. 130: 314.  
 Matters necessary to be set forth—Justness of claim. 130: 315.  
 — Credits, offsets, security and usury. 130: 315.  
 — Particulars of unmatured or contingent claim. 130: 317.  
 — Production of instrument or copy. 130: 317.  
 — Reference to lien or security. 130: 318.  
 Verification—Necessity. 130: 318.  
 — Waiver. 130: 320.  
 — Sufficiency. 130: 320.  
 — Who may make. 130: 323.  
 Amendment of claim. 130: 323.  
 — Effect of statute of limitations. 130: 324.

**§ 19. Debts Due from Executor or Administrator.**

In general. 132: 230.  
 Rule of liability as for money on hand. 112: 407.  
 Modification of rule—To prevent injustice. 112: 408.  
 — To avoid liability for contempt. 112: 408.  
 — To preserve lien of debt. 112: 408.  
 Liability of sureties—In general. 112: 409.  
 — In case of partnership debt. 112: 409.  
 — In case of insolvency of principal. 112: 409.  
 Determination of existence of debt. 112: 413.  
 Action on debt. 112: 413.

**§ 20. Causes for Which Legislature may Authorize Sale.**

General power of sale rests on statute. 79: 82.  
 Payment of debts. 79: 83.  
 Payment of legacies. 79: 86.



For investment of proceeds. 79: 87.  
For best interests of estate. 79: 90.

### § 21. Sales Under Order of Court.

Right of executors or administrators to purchase their own sales directly or indirectly. 136: 794-802.

### § 22. Laches in Applying for Order to Sell Land.

What is reasonable time within discretion of court. 26: 22.  
No definite rule as to what constitutes laches. 26: 25.  
Cases illustrating laches. 26: 25.  
Laches based on analogy of statute of limitations. 26: 26.  
Laches may bar in less time than statute. 26: 26.  
Laches by analogy of nonclaim against administrator. 26: 27.  
When rule barring claim is strictly applied. 26: 28.  
Laches under particular statutes. 26: 28.  
Excuses for delay. 26: 28.

### § 23. Administrator De Bonis Non.

Property vesting in. 108: 419.  
When bound by and may take advantage of proceedings for or against or acts done by predecessor. 108: 430.  
Liabilities. 108: 432.

### § 24. — Appointment.

When authorized. 108: 414.  
At whose instance. 108: 416.  
Persons entitled. 108: 417.  
Time of appointment. 108: 417.  
Jurisdiction to appoint. 108: 417.  
Notice of application. 108: 418.  
Collateral attack upon appointment. 108: 418.

### § 25. — Authority and Duties.

Generally. 108: 423.  
Statutory modification of common law. 108: 424.  
Under powers conferred by will. 108: 425.

### § 26. — Actions by.

General rule. 108: 426.  
For recovery of specific property. 108: 426.

Conversion of personal property. 108: 427.

On choses in action. 108: 428.  
On judgment in favor of predecessor. 108: 428.  
Against predecessor for accounting. 108: 429.  
Suits in equity. 108: 430.

### EXECUTOR'S SALE.

See Executors and Administrators, §§ 20-22.

### EXEMPLARY DAMAGES.

In general. See Damages, §§ 9, 10.  
For wrongful attachment. See Attachment, § 7.  
Master's liability for exemplary damages for acts of servant. See Master and Servant, § 35.

### EXEMPTIONS.

IN GENERAL, § 1.  
EXEMPTION LAWS, § 2.  
WHO ARE LABORERS, § 3.  
WEARING APPAREL, § 4.  
EARNINGS OF DEBTOR, § 5.  
PROCEEDS OF EXEMPT PROPERTY, § 6.  
TOOLS AND IMPLEMENTS, § 7.  
VEHICLES AND HARNESS, § 8.  
Exemption laws as impairment of obligation of contract. See Constitutional Law, § 16.  
From grand jury service. See Grand Jury, § 1.  
From road work. See Highways, § 2.  
Of public property from special taxes. See Municipal Corporations, § 20.  
Of earnings of public officers. See Officers, § 11.  
From service of civil process. See Process, § 4.  
From taxation. See Taxation, § 11.

#### § 1. In General.

List of various callings and kinds of property exempt. 22: 253.  
Property of partners and cotenants, real and personal. 1: 593.  
Pension money in hands of pensioner. 2: 596, 597.  
Injunction against proceedings in another state to evade exemption laws. 122: 451-454.  
Loss of right by abandonment of occupation or tools of trade. 116: 351-353.

#### § 2. Exemption Laws.

Extraterritorial effect. 2: 240-242.  
Application to nonresidents. 2: 242.

#### § 3. Who are Laborers.

In general. 58: 303.  
Overseers, foremen and superintendents. 58: 306.

Engineer, teamster and peddler. 58: 307.  
 Mail carriers. 58: 308.  
 Traveling salesmen. 58: 308.  
 Contractors. 58: 308.  
 School teachers. 58: 308.

#### § 4. Wearing Apparel.

General rule. 125: 43.  
 Goods not made into garments. 125: 44.  
 Articles not used as garments. 125: 44.  
 Jewelry as wearing apparel. 125: 44.  
 — Watches. 125: 45.  
 — Jewelry habitually worn. 125: 45.

#### § 5. Earnings of Debtor.

Varied phraseology of statutes exempting wages, salaries and earnings. 102: 82.  
 Nature or class of employment—Definitions. 102: 84.  
 — Manual labor. 102: 86.  
 — Skill or intellectual labor. 102: 87.  
 — Combination of intellectual and manual labor. 102: 88.  
 — Work as independent contractor. 102: 92.  
 Character of compensation—Mode of payment. 102: 94.  
 — Terms "wages" and "salary" defined. 102: 94.  
 — Term "current wages" defined. 102: 95.  
 — Commissions or salary and commission. 102: 96.  
 — Piece-work. 102: 96.  
 — Earnings. 102: 97.  
 Debtor as head of family. 102: 99.  
 Use of fund for support of debtor's family. 102: 99.  
 Specific amount. 102: 101.  
 Dependent upon period during which earned. 102: 101.  
 Mode of construing exemption statutes. 102: 102.

#### § 6. Proceeds of Exempt Property.

Voluntary sales. 66: 381.  
 Sale under attachment. 66: 382.  
 Exchange for other property. 66: 382.  
 Purchase of new goods with proceeds. 66: 382.  
 Products or profits of exempt property. 66: 383.

Judgment recovered for exempt property. 66: 383.  
 Proceeds of insurance on exempt property. 66: 385.  
 Proceeds of pension money. 66: 386.

#### § 7. Tools and Implements.

Necessary to debtor. 123: 140.  
 Use by debtor. 123: 140.  
 Size and character. 123: 141.  
 Farm implements. 123: 142.  
 — Suspension of occupation. 123: 143.  
 Professional. 123: 146.  
 Undertaker's tools. 123: 146.  
 Safe of insurance agent, jeweler, and others. 123: 146.  
 Seat of stockbroker. 123: 147.  
 Musical instruments. 123: 147.  
 Barbers. 123: 147.  
 Tailors. 123: 147.  
 Milliners. 123: 147.  
 Guides and fishermen. 123: 148.  
 Photographers. 123: 148.  
 Printers. 123: 148.  
 Bakers. 123: 149.  
 Caterer or innkeeper. 123: 149.  
 Bowling alley equipment. 123: 149.

#### § 8. Vehicles and Harness.

Wagons and buggies. 123: 143.  
 — In repair shop. 123: 144.  
 Omnibus or dray. 123: 144.  
 Hearse. 123: 144.  
 Carts and two-wheeled vehicles. 123: 144.  
 Bicycles. 123: 145.  
 Vehicles used by particular persons. 123: 145.  
 Harness. 123: 145.

#### EXILES.

Rights of wife of exile. See Husband and Wife, § 11.

#### EX MALEFICIO.

Devisee or legatee as trustee ex maleficio. See Wills, § 54.

#### EXPECTANCY.

Assignment of. See Assignment, § 3.

#### EXPECTATION OF DEATH.

Necessary to gift causa mortis. See Gifts, § 3.

#### EXPERIMENTS.

As evidence in criminal cases. See Criminal Law, § 40.

By jurors as ground for new trial. See Criminal Law, § 57.  
As evidence in civil cases. See Evidence, § 12.

### EXPERT TESTIMONY.

Validity of contracts to give. See Contracts, § 9.

### EXPERT WITNESS.

Proof of foreign law by. See Statutes, § 11.

### EXPERT WITNESSES.

Power of court to limit number. See Witnesses, § 1.

### EXPLOSIVES.

Right to use or store explosives threatening injury to adjoining land owner. See Adjoining Land Owners, § 3.  
Care required to prevent escape and explosion of gas. See Gas, § 1.

Liability of insurer for loss from. See Insurance, § 32.  
Police power of cities to regulate use, storage and transportation. See Municipal Corporations, § 3.

Manufacturer's liability to third persons for negligence. See Negligence, § 9.  
Care required of persons using explosives to preserve human life. See Negligence, § 2.

Injuries by railroad from blasting. See Railroads, § 11.  
Duty of warehousemen storing. See Warehousemen, § 6.

### § 1. Liability of Persons Keeping or Storing.

Liability regardless of care exercised. 67: 134.

Powder magazine. 67: 135, 137.

Keeping gunpowder on private premises. 67: 135.

Dynamite. 67: 136.

Explosive oils. 67: 137.

Railroad torpedoes. 67: 139.

Negligent storing. 67: 139.

Keeping or storing as a nuisance. 67: 134-139.

Duty of warehouseman receiving explosives for storage. 136: 239.

Use and storage of explosives as affecting owners of adjoining land owner. 123: 578-585.

Municipal regulation of use, storage and transportation of explosives within limits of city. 108: 356-358.

### EX POST FACTO LAWS.

See Constitutional Law, § 18.

### EXPOSURE TO DANGER.

See Voluntary Exposure.

### EXPRESS COMPANIES.

Relation of express companies and their servants to other carriers. See Carriers, § 4.  
Duties as carriers. See Carriers, § 5.

### EXPRESS MESSENGERS.

As passengers. See Carriers, § 38.

### EXPRESS WAGONS.

Exempt from execution. See Exemptions, § 8.

### EXPULSION.

Of members of associations. See Associations.

Of passenger from train. See Carriers, § 52.

Of stockholders from corporations. See Corporations, § 29.

Of school pupil. See Schools and School Districts, § 5.

Of trespasser. See Trespass, § 3.

### EXTENDING EXISTENCE.

Of dissolved corporation. See Corporations, § 69.

### EXTENT OF POSSESSION.

Adverse possession. See Adverse Possession, § 11.

### EXTORTION.

Consent as defense. See Criminal Law, § 7.

#### § 1. Nature and Grade of Offense.

Common-law definition. 116: 448.

Distinguished from oppression, bribery or robbery. 116: 449.

Grade of offense. 116: 451.

#### § 2. Threats.

Nature of offense of extortion by threats. 116: 457.

Gist of offense. 116: 458.

What must be threatened. 116: 458.

Unlawful use of fear must control transaction. 116: 464.

Threat must be definite and understandable. 116: 459.

Threat as joke. 116: 466.

Threat must inspire fear. 116: 464.

Person acting as decoy. 116: 465.

Threat must exact property without consent of owner. 116: 466.

In connection with demands under color of right. 116: 467.

To incite strike or boycott or their continuance. 116: 472.

Guilt or innocence of threatened person. 116: 474.

Failure to obtain property by means of threats. 116: 474.

Belief in truth of accusation. 116: 475.

**§ 3. Taking Illegal Fees.**

- Who may commit offense. 116: 451.
- Necessity that officer demand or exact. 116: 452.
- Necessity for demand under color of office. 116: 453.
- Excessive fees for extra trouble or work. 116: 454.
- Where gross sum is received for official fees and services of attorney. 116: 454.
- Necessity for corrupt intent of officer. 116: 454.
- Effect of honest belief that fee was legal. 116: 456.
- Effect of custom or usage. 116: 457.
- Fees exacted from person not liable. 116: 457.
- Necessity that thing taken be of value. 116: 457.

**EXTRA BAGGAGE.**

See Carriers, § 58.

**EXTRADITION.**

- GENERAL NOTE, § 1.
- BETWEEN WHAT POLITICAL ENTITIES RIGHT EXISTS, § 2.
- GROUND FOR REFUSAL TO SURRENDER OF FUGITIVE, § 3.
- WHO MAY BE EXTRADITED, § 4.
- WHO MAY DEMAND, § 5.
- WARRANT, § 6.
- AUTHENTICATION OF REQUISITION PAPERS, § 7.
- ARREST AND DETENTION BEFORE DEMAND, § 8.
- CONDUCT OF PROCEEDINGS AND RIGHT OF ACCUSED TO BE HEARD, § 9.
- SHOWING THAT ACCUSED IS FUGITIVE FROM JUSTICE, § 10.
- SHOWING THAT ACCUSED IS CHARGED WITH CRIME, § 11.
- DEPORTATION OF FUGITIVE TO DEMANDING STATE, § 12.
- SECOND APPLICATION AND REVIEW OF PROCEEDINGS, § 13.
- TRYING FUGITIVE FOR OTHER OFFENSES, § 14.
- INTERNATIONAL EXTRADITION, § 15.

**§ 1. General Note.**

- Nature and source of right. 112: 106, 109.
- State legislative regulation. 112: 111.
- Who may be extradited. 112: 114.
- Who may demand fugitive. 112: 116.
- Requisites of requisition papers. 112: 117.
- Showing that accused is fugitive. 112: 121.

Showing that accused committed crime. 112: 125.

Proceedings and right of accused to hearing. 112: 136.

Bail. 112: 139.

Warrant. 112: 140, 141.

Revocation of warrant. 112: 141.

Status and rights of agent sent for fugitive. 112: 142.

Delay in removing fugitive from state. 112: 142.

Second application. 112: 143.

Questioning regularity after removal. 112: 144.

Review of proceedings by courts. 112: 144.

**§ 2. Between What Political Entities Right Exists.**

To and from territories or possessions of United States or places under its protection. 112: 112.

Effect of consolidation or merger of political powers on existing treaties. 112: 113.

Determination of political status of government demanding fugitive. 112: 114.

**§ 3. Grounds for Refusal to Surrender Fugitive.**

Obligation of state to surrender—Basis. 68: 129.

Federal constitution construed. 68: 129.

Act of Congress construed. 68: 130.

Nature of obligation to surrender. 68: 130.

When refusal is proper. 68: 131.

State statutes. 68: 133.

**§ 4. Who may be Extradited.**

General right to extradite fugitives. 112: 114.

Right to refuse extradition where fugitive is in custody in asylum state. 112: 115.

Right to refuse extradition of citizen of asylum state to foreign country. 112: 115.

**§ 5. Who may Demand.**

Interstate extradition. 112: 116.

International extradition. 112: 116.

**§ 6. Warrant.**

What the warrant must show. 112: 140.

Effect of various recitals in executive warrant. 112: 141.  
 Right of executive to revoke warrant. 112: 142.

### § 7. Authentication of Requisition Papers.

Sufficiency. 112: 117.  
 Who may authenticate. 112: 119.  
 Proof of proper authentication. 112: 120.  
 Determination of sufficiency. 112: 121.

### § 8. Arrest and Detention Before Demand.

Right to arrest and detain fugitive in asylum state before demand. 46: 414, 415.  
 Time fugitive may be detained awaiting demand. 46: 415.  
 Duty of arresting officer. 46: 415.  
 Illustrations. 46: 416.  
 Statutory provisions giving right. 46: 417.

### § 9. Conduct of Proceedings and Right of Accused to be Heard.

Degree of technicality required. 112: 136.  
 Right of accused to be heard. 112: 137.  
 Effect of waiver of right to produce evidence on hearing of habeas corpus proceeding. 112: 138.  
 Necessity for translation of documents in foreign language. 112: 138.  
 Adjournment of proceedings. 112: 138.  
 Amount and degree of proof requisite in international proceedings. 112: 138.  
 Bail pending proceedings. 112: 139.  
 Right of courts to review action of executive. 112: 144.  
 Second application. 112: 143.

### § 10. Showing That Accused is Fugitive from Justice.

Necessity and sufficiency. 112: 121.  
 Nature of question and who decides it. 112: 121.  
 Degree of proof requisite. 112: 122.  
 Right of accused to be heard on question. 112: 122.  
 Sufficiency of proof—In general. 112: 122.

— Where flight is merely constructive. 112: 122.

— Where accused was in demanding state during period of limitations. 112: 122.

— Where accused conclusively proves that he was not in demanding state. 112: 123.

### § 11. Showing That Accused is Charged With Crime.

Necessity for charge against accused. 112: 124.

Proof of identity of accused as person charged. 112: 124.

Indictment or affidavit as evidence. 112: 125.

Nature of question act is a crime in demanding country. 112: 125.

— How determined. 112: 125.

Proof of laws of demanding state. 112: 126.

What are political crimes within meaning of treaties. 112: 126.

What acts are "treason, felony or other crime." 112: 129.

Who are magistrates. 112: 130.

Necessity for bona fide charge in demanding state—Effect of ulterior motive or malice. 112: 130.

— Effect of long delay in finding indictment. 112: 131.

Effect of conviction of accused on constitutional requirement that he be "charged" with crime. 112: 131.

Forms of pleading necessary in demanding state to constitute a charge or criminal prosecution—Right of each state to prescribe forms. 112: 132.

— Sufficiency of papers substantially charging crime. 112: 132.

— Right to use equivalent expressions in charge. 112: 134.

— Interchangeable character of complaints, affidavits, informations and indictments. 112: 134.

— Complaint, affidavit, etc., on information and belief. 112: 135.

— Right to amend papers after hearing of extradition proceedings. 112: 136.

**§ 12. Deportation of Fugitive to Demanding State.**

Status and rights of agent appointed to receive and deport fugitive. 112: 142.

Effect of delay in deporting prisoner after allowance of extradition. 112: 142.

Right to question regularity of extradition after removal. 112: 144.

**§ 13. Second Application and Review of Proceedings.**

Right to make second application after refusal of extradition. 112: 143.

Right to question regularity of proceedings after removal of fugitive to demanding state. 112: 144.

Right of courts to review action of execution. 121: 144.

**§ 14. Trying Fugitive for Other Offenses.**

Right to try extradited persons for other offenses. 10: 207-210.

**§ 15. International Extradition.**

Necessity for existence of treaty or convention stipulations. 112: 107.

Limitation to crimes embraced in treaty. 112: 108.

Effect of treaty stipulations on state courts. 112: 108.

Construction of extradition treaties. 112: 109.

**EXTRAHAZARDOUS WORK.**

Rights of servant accepting. See Master and Servant, § 24.

**EXTRATERRITORIAL AUTHORITY.**

Of executors and administrators. See Executors and Administrators, § 11.

Of guardians. See Guardian and Ward, § 1.

**EXTRATERRITORIAL EFFECT.**

Of adoption. See Adoption, § 1.

Of divorce decrees. See Judgment, § 23.

Of laws regulating marriage. See Marriage, § 2.

**EXTRINSIC EVIDENCE.**

See Evidence, §§ 25-29.

**FACTORS.****§ 1. Disobedience of Instructions.**

Emergencies justifying disobedience of instructions. 6: 37.

**§ 2. When Consignment for Sale Vests Title.**

What constitutes consignment for sale. 45: 203.

Nature of transaction. 45: 203, 206.

Liability of consignor for freight. 45: 204.

Where factor makes advances. 45: 204, 205.

Acceptance and payment of drafts and bills of lading. 45: 205.

Nature of factor's agency. 45: 206.

Consignment distinguished from sale. 45: 206.

Special agreements. 45: 207.

Fraudulent agreements. 45: 207.

Attachment by creditors. 45: 208, 209.

Actions by factor to recover goods from third persons. 45: 209.

Loss of goods before acceptance. 45: 210.

**FACTORY.**

As building subject to arson. See Arson, § 2.  
Deposit of debris of factory in stream. See Manufacturers, § 1.

**FAILURE OF CONSIDERATION.**

For contract. See Contracts, § 13.

**FAILURE TO SUPPLY WATER.**

Liability of water company for. See Waters and Watercourses, § 13.

**FAIRS.**

Street fairs. See Municipal Corporations, § 22.

Taxation for public celebrations. See Taxation, § 4.

**FALLEN WIRES.**

Injuries from. See Electricity, § 1.

**FALLING TOOLS.**

As menace to adjoining land owners. See Adjoining Land Owners, § 2.

**FALLING WALLS.**

Liability of fire insurer for loss from. See Insurance, § 32.

**FALSE CREDIT.**

Liability for false ratings. See Mercantile Agencies, § 1.

**FALSE IMPRISONMENT.**

Commitment on charge of vagrancy as. See Vagrancy, § 5.

**§ 1. General Note.**

Definition and illustrations. 67: 408.  
Arrest with regular process. 67: 410.  
Arrest under void process. 67: 413.  
Arrest without warrant or process. 67: 415.

Probable cause. 67: 415.

Arrest under erroneous process. 67: 417.

Unreasonable detention after arrest. 67: 419.

Arrest by private party. 67: 420.

Private citizen aiding officer. 67: 421.

Judicial officers. 67: 422.

Arrest under void ordinance. 67: 424.

Jailers. 67: 424.

Attorneys. 67: 425.

Liability of corporations. 67: 426.

**§ 2. Nature and Elements.**

Defined. 118: 719.

Necessity for coercion. 118: 719.

Necessity for actual force. 118: 721.

Threats. 118: 722.

Words alone. 118: 723.

**FALSE PRETENSES.****§ 1. Obtaining Goods or Money by.**

Nature and elements of offense. 25: 378.

Distinguished from other crimes. 25: 391.

What constitutes false representation or pretense. 25: 379.

Pretense must induce belief. 25: 379.

Pretense not sufficient to deceive prudent person. 25: 380, 382.

False statement made true before being acted on. 25: 380.

False pretense forming only part of means of operating. 25: 380.

Presumed intent. 25: 380.

Value of thing obtained immaterial. 25: 380.

Illustrations of false pretenses. 25: 380.

Receiving money through false pretenses of another. 25: 382.

Obtaining satisfaction of debt. 25: 383.

True pretense believed to be false. 25: 383.

Property must pass. 25: 383.

Mere concealment is not pretense. 25: 383.

Obtaining one's own property. 25: 383.

Obtaining charitable donations. 25: 383.

Obtaining a judgment. 25: 383.

False statement believed to be true. 25: 383.

Intent or ability to repair wrong done. 25: 383.

Indictment. 25: 384.

Evidence. 25: 387.

Variance. 25: 390.

Instructions. 25: 391.

**§ 2. Confidence Games.**

Antiquity of the offense. 134: 363.

What is a confidence game. 134: 364.

Indictment. 134: 364.

Bill of particulars. 134: 366.

Elements of offense. 134: 366.

Extraterritorial force of statute punishing. 134: 368.

Confidence operators as vagrants. 137: 955.

**FALSE RATING.**

As justification for breach of contract to marry. See Breach of Marriage Promise, § 2.

**FALSE REPRESENTATIONS.**

See Fraud.

**FAMILY ALLOWANCE.**

Effect of setting apart homestead to widow. See Executors and Administrators, § 17.

**FAMILY OBLIGATIONS.**

Admissibility of evidence of family ties and obligations of injured persons. See Negligence, § 18.

**FANCIFUL NAMES.**

As trademarks. See Trademarks and Trade Names, § 2.

**FANTAN.**

As gambling game. See Gaming, § 4.

**FARES.**

Passenger fares. See Carriers, §§ 34-38.

Duty to pay fare though not furnished seat. See Carriers, § 48.

**FARM IMPLEMENTS.**

Exempt from execution. See Execution, § 7.

**FARM LEASES.**

Idea of landlord on crops. See Landlord and Tenant, § 31.  
 Right of tenant to covenants. See Landlord and Tenant, § 33.

**FAST DRIVING.**

On public highways. See Highways, § 9.  
 By automobiles. See Highways, § 10.

**FEAR.**

As element of damage. See Damages, § 7.  
 Extortion by. See Extortion, § 2.

**FEDERAL GOVERNMENT.**

Immunity from suit. See United States, § 1.

**FEE.**

To soil in highway. See Highways, § 4.

**FEED AND WATER.**

Duty of carrier to furnish to livestock. See Carriers, § 29.

**FEEES.**

See, also, Attorney's Fees.  
 Of attorneys. See Attorney and Client, §§ 13-15.  
 Of auctioneers. See Auctions and Auctioneers, § 5.  
 Taking or demanding illegal fees. See Extortion, § 3.  
 Prerequisite to jury trial. See Jury, § 1.

**FEIGNED ACCOMPLICES.**

Status of. See Criminal Law, §§ 12, 13.

**FELLOW-PASSENGERS.**

Duty to guard passengers from injuries by. See Carriers, § 44.

**FELLOW-SERVANTS.**

Who are fellow-servants and the fellow servant rule. See Master and Servant, § 18.

**FENCES.**

Rule that stock must be fenced out. See Animals, § 5.  
 Validity of law requiring railroads to build. See Railroads, § 9.  
 Right to fence private road. See Private Roads, § 1.  
 Enjoining interference with fences or gates. See Injunction, § 4.  
 Right to fence highway. See Highways, § 4.  
 Validity of local option fence laws. See Constitutional Law, § 8.

§ 1. Liability for Injuries from Defects in Partition Fences.

When fence is joint property of adjoining owners. 54: 513.

Trespass by cattle owned by third person. 54: 513.  
 Trespass by cattle of adjoining owner. 54: 513, 514.  
 Injuries from barbed wire. 54: 514.

**FERRIES.**

State license of. See Commerce, § 1.

**FICTITIOUS CLAIMS.**

In assignments for creditors. See Assignments for Benefit of Creditors, § 1.

**FICTITIOUS NAME.**

Deeds in. See Deeds, § 4.  
 As trade names. See Trademarks and Trade Names, § 2.

**FICTITIOUS PAYEE.**

Validity of certified check made to. See Banks and Banking, § 5.

**FIDELITY INSURANCE.**

See Insurance, §§ 47-53.

**FIDUCIARIES.**

Right to plead statute of limitations. See Limitation of Actions, § 9.  
 Dealings between attorney and client. See Attorney and Client, § 5.

**FIDUCIARY DEBTS.**

Liability of homestead for. See Homestead, § 3.

**FIELD-NOTES.**

Considered in ascertaining boundary. See Boundaries, § 1.

**FILING PAPERS.**

What constitutes. See Courts, § 3.  
 Filing deposition. See Depositions, § 1.

**FINDING LOST GOODS.**

IN GENERAL, § 1.  
 DEFINITIONS, § 2.  
 RIGHTS AND DUTIES OF FINDER, § 3.  
 ACTIONS, § 4.

What constitutes abandonment of goods and rights arising therefrom. See Abandonment.

§ 1. In General.

Joint finders. 129: 410.  
 Loss of owner's title. 129: 410.  
 Larceny by finder. 129: 411.  
 Place of finding and ownership of premises or receptacle or property is found. 129: 404.



**§ 2. Definitions.**

Lost property. 129: 400.  
Finders. 129: 403.

**§ 3. Rights and Duties of Finder.**

Possession of property. 129: 406.  
Reimbursement for expenses. 129: 407.  
Lien. 129: 407.  
Reward. 129: 408.  
Use of property. 129: 408.  
Duties of finder. 129: 408.

**§ 4. Actions.**

By finder. 129: 409.  
By owner. 129: 409.

**FINES.**

Liability of homestead for. See Homestead, § 3.

**FIRM ASSETS.**

Right of creditor of one partner to levy on firm assets. See Partnership, § 16.

**FIRM SECRETS.**

Protection of. See Partnership, § 2.

**FIREARMS.**

As baggage. See Carriers, § 58.

**FIRE-BOTE.**

Estovers. See Landlord and Tenant, § 33.

**FIRE COMPANIES.**

Equity jurisdiction over. See Associations, § 4.

**FIRE-ESCAPES.**

Liability of hotel for failure to provide. See Innkeepers, § 2.

**FIRE LIMITS.**

Building wooden structures in fire limits may be declared a crime. See Criminal Law, § 1.

**FIRES.**

Rights of land owners to set out fires dangerous to adjoining owner. See Adjoining Land Owners, § 2.  
Liability of bailee for loss by fire. See Bailment, § 1.  
Liability of hotel-keeper for loss of goods of guest by fire. See Innkeepers, § 4.  
Spread of fire as proximate cause of injury. See Negligence, § 10.  
Communicated by railroads. See Railroads, § 14.  
Liability of warehousemen for loss by. See Warehousemen, § 6.  
Liability of water company for loss by fire occasioned by failure to supply water. See Waters and Watercourses, § 13.

**§ 1. Proximate Cause of Injury by Fire.**

Spread of fire in general. 36: 823.  
Intervention of space, diversity of ownership. 36: 824.  
Wind as intervening efficient cause. 36: 824.  
Rule in New York and Pennsylvania. 36: 825.  
Acts of land owners and others. 36: 826.  
Preventing extinguishment of fire. 36: 827.

**§ 2. Liability for Setting Out.**

General principles. 30: 501.  
Presumption of negligence. 30: 502.  
Illustrations. 30: 502.  
Clearing land. 30: 503.  
Negligence as question for jury. 30: 503.  
Instances of liability. 30: 504.  
Setting fire on land of another. 30: 505.  
Statutory liability. 30: 505.  
Fire to produce motive power. 30: 506.  
Damages. 30: 507.  
Liability for injuries resulting to adjoining land owners from negligently setting out. 123: 576, 577.

**FIREWORKS.**

Right to use streets for display of. See Municipal Corporations, § 22.

**FIRST DAY.**

Exclusion of first day in computing time. See Time, § 1.

**FISH.****§ 1. Ownership or Property in Fish.**

In their natural state. 131: 751.  
Reduced to possession. 131: 752.

**§ 2. Right to Take or Catch.**

In private and non-navigable waters. 131: 752.  
In public navigable waters. 131: 755.  
As incident to navigation. 131: 758.  
English rule. 131: 758.  
Several or exclusive right of fishery. 131: 759.  
Assignment of fishery. 131: 761.  
Right to use land under or along water while fishing. 131: 762.  
Rights conflicting with fishery. 131: 762.

Remedies for interference with right of fishery. 131: 764.

Right to fish on lands of another. 13: 416-420.

Right of riparian owner on navigable stream to fish is not exclusive. 68: 694.

Police power of state to protect and regulate taking. 42: 138.

### FISHERMEN.

Tools exempt from execution. See Exemptions, § 7.

### FIXING LIABILITY.

Of indorser or drawer of check. See Bills and Notes, § 16.

### FIXTURES.

Right to replevin. See Replevin, § 2.

§ 1. What are.

In general. 13: 153-155.

Tests for determining what are. 105: 646.

§ 2. Retaining Character as Personality by Agreement.

Who may make agreement. 84: 878.

Time and character of agreement. 84: 878.

When no agreement may be made. 84: 879.

Between the parties—Express agreement. 84: 881.

— Implied agreement. 84: 881.

Effect on rights of third persons. 84: 887.

— Prior mortgagee. 84: 888.

— Subsequent mortgagee or purchaser. 84: 892, 893.

— Purchaser at foreclosure or execution sale. 84: 895, 896.

— Purchaser of mortgagee. 84: 898.

— Lessor or remainderman. 84: 899.

— Lienholders. 84: 900.

### FLAGS.

Inscriptions on flags as evidence of conspiracy. See Conspiracy, § 5.

### FLOAT.

Finding float as discovery of mineral. See Mines and Minerals, § 2.

### FLOATING WAREHOUSES.

Duties of owners. See Warehousemen, § 5.

### FLOUR.

Intermixture of flour belonging to different owners. See Confusion of Goods, § 1.

### FOG.

Duty of officers of vessel moving in fog. See Collision, § 1.

### FOLLOWING ORE VEIN.

See Mines and Minerals, § 5.

### FOLLOWING TRUST FUNDS.

See Trusts, § 16.

### FOOD.

Manufacturer's liability to third persons for negligence. See Negligence, § 9.

Cold storage of. See Warehousemen, § 3.

Liability of water companies furnishing impure water. See Waters and Watercourses, § 13.

§ 1. Liability of Manufacturer.

Liability of manufacturer to person injured by unwholesome food. 111: 713-715.

### FOOTPRINTS.

Comparing footprints to identify accused. See Criminal Law, § 37.

### FORCE.

Permissible in making arrest. See Arrest, § 1.

Permissible in resisting arrest. See Arrest, § 2.

As element of robbery. See Robbery, § 3.

Permissible to expel trespasser. See Trespass, § 3.

### FORCIBLE DETAINER.

See Forcible Entry and Detainer, § 4.

### FORCIBLE ENTRY AND DETAINER.

RIGHT OF OWNER TO ENTER LAND, § 1.

UNLAWFUL DETAINER, § 2.

WHAT MAKES DETAINER UNLAWFUL HOLDING OVER AFTER EXPIRATION OF LEASE, § 3.

FORCIBLE DETAINER, § 4.

CIVIL ACTION FOR PERSONS ENTITLED TO SUE, § 5.

— PARTIES DEFENDANT, § 6.

— SUBJECT MATTER AND ESSENTIAL ELEMENTS OF CAUSE OF ACTION, § 7.

— DEFENSES, § 8.

§ 1. Right of Owner to Enter Land.

Forcibly and against will of occupant. 19: 544.

Entry without force or violence. 19: 546.

Forcible detainer after peaceable entry.  
19: 547.

## § 2. Unlawful Detainer.

Defined. 120: 33.

Necessity that relation of landlord and tenant exist. 120: 35.

Persons entitled to sue—Original landlord. 120: 36.

— Persons succeeding interest of original landlord. 120: 36.

— Purchasers and lessees. 120: 37.

— Assignee of lease or rents. 120: 38.

— Heirs and devisees. 120: 38.

— Reversioners. 120: 39.

— Executors and administrators. 120: 39.

— Other successors. 120: 39.

Persons against whom suit may be brought. 120: 55.

## § 3. What Makes Detainer Unlawful Holding Over After Expiration of Lease.

— Tenancy for definite term. 120: 40.

— Tenancy at sufferance. 120: 42.

— Tenancy at will. 120: 42.

— Tenancy from month to month. 120: 43.

— Tenancy from year to year. 120: 45.

Notice to quit—Form of. 120: 48.

— Who must give. 120: 45.

— To whom must be given. 120: 46.

— Who may serve. 120: 47.

— Manner of service. 120: 47.

— Proof of service. 120: 48.

— Waiver. 120: 49.

Holding over after forfeiture.

— For default in payment of rent. 120: 50.

— Other causes of forfeiture. 120: 51.

— Demand for rent. 120: 52.

— Demand where cause of forfeiture is other than nonpayment of rent. 120: 53.

— Giving and serving demands. 120: 54.

Use of premises for illegal purposes. 120: 55.

## § 4. Forcible Detainer.

Defenses—Want of title. 120: 56–60.

— Outstanding title. 120: 60.

— Invalidity of lease. 120: 61.

— Acts and omissions of landlord. 120: 62.

— Acts of defendant. 120: 64.

— Equitable defenses. 120: 65.

— Bar of statute of limitations. 120: 66.

Redemption or relief from judgment. 120: 66.

## § 5. Civil Action for—Persons Entitled to Sue.

Persons forcibly dispossessed. 121: 372.

Married women. 121: 373.

Corporations, agents, tenants and lessors. 121: 373.

Tenants in common. 121: 374.

Grantees and assignees. 121: 375.

Persons claiming under owner or occupant—Grantees. 121: 375.

— Personal representatives. 121: 376.

— Heirs and devisees. 121: 375.

— Receivers. 121: 376.

— Licensees and owners of easements. 121: 376.

Joinder and severance. 121: 376.

## § 6. — Parties Defendant.

In general. 121: 377.

Married women. 121: 377.

Corporations, agents, tenants and lessors. 121: 378.

Tenants in common. 121: 378.

Grantees. 121: 379.

Public officers and persons put in possession by them. 121: 379.

Persons claiming under persons guilty of forcible entry. 121: 381.

Joinder of defendants. 121: 381.

## § 7. — Subject Matter and Essential Elements of Cause of Action.

Subject matter of proceeding. 121: 381.

Necessity that possession of plaintiff be peaceable, exclusive, complete, entire and continuous. 121: 382–389.

Force. 121: 390–398.

Notice and demand for possession—Necessity. 121: 402.

— Who may give. 121: 403.

— Time to give. 121: 403.

— Formal requisites. 121: 404.

**§ 8. — Defenses.**

Denial of essential averments in complaint. 121: 404.  
 Title or right to possession. 121: 405.  
 Title in government. 121: 409.  
 Termination of plaintiff's title. 121: 410.  
 Prior possession of defendant. 121: 410.  
 Estoppel. 121: 411.  
 Invalidity or unlawfulness of lease. 121: 411.  
 Bankruptcy of defendant. 121: 411.  
 Counterclaims. 121: 411.  
 Equitable defenses. 121: 411.  
 Bar of statute of limitations. 121: 413.

**FORECLOSURE.**

Of chattel mortgages. See Chattel Mortgages, § 11.  
 Of pledge of corporate stock. See Corporations, § 28.  
 Execution sales. See Execution, §§ 6-13.  
 Who may redeem from foreclosure sale. See Mortgages, § 22.  
 Waiver or release of equity of redemption. See Mortgages, § 23.  
 Under power in mortgage or trust deed. See Mortgages, § 18-20.  
 Who may purchase at foreclosure sale. See Mortgages, § 20.  
 Litigation of paramount title in foreclosure suit. See Mortgages, § 21.

**FOREIGN ACTIONS.**

Enjoining prosecution of civil actions in another state or country. See Injunction, § 5.

**FOREIGN ADMINISTRATION.**

Powers and duties of executor or administrator as to property out of state. See Executors and Administrators, § 11.

**FOREIGN ADOPTION.**

Extraterritorial effect of adoption. See Adoption, § 1.

**FOREIGN BILL OF EXCHANGE.**

Law governing demand, protest and notice of dishonor. See Bills and Notes, § 17.

**FOREIGN CONTRACTS.**

Actions to enforce. See Contracts, § 27.

**FOREIGN CORPORATIONS.**

Proceedings against foreign corporations doing business in state. See Absentees, § 1.  
 Right of courts to interfere with internal affairs of. See Corporations, § 72.  
 Jurisdiction of courts over. See Corporations, § 73.  
 Mode of serving process upon. See Corporations, § 74.

Capacity to plead statute of limitations. See Limitations, § 9.  
 Taxation of franchise of. See Taxation, § 8.

**FOREIGN COUNTRIES.**

Application of statute of limitations to actions by. See Limitation of Actions, § 7.

**FOREIGN GUARDIANS.**

Powers of. See Guardian and Ward, § 1.

**FOREIGN JUDGMENTS.**

See Judgment, §§ 45-47.

**FOREIGN LAW.**

Judicial notice of. See Evidence, § 2.

**FOREIGN MARRIAGES.**

Validity of. See Marriage, § 2.

**FOREIGN STOCKHOLDERS.**

Enforcement of liability of. See Corporations, § 34.

**FOREIGN WILL.**

Probate and establishment of. See Wills, § 24.

**FOREMEN.**

Right to exemptions given to laborers. See Exemptions, § 3.  
 As vice-principals. See Master and Servants, § 19.  
 Right to mechanics' liens. See Mechanics' Liens, § 2.

**FORESEEN RESULTS.**

As test of proximate cause of injury. See Negligence, § 10.

**FOREST RESERVE.**

Right of land department to investigate alleged discovery of minerals within. See Mines and Minerals, § 3.

**FORESTS.**

Penalties and damages for cutting, injuring or removing timber from. See Woods and Forests, § 1.

**FORFEITURES.**

Of certificate of membership in mutual aid society. See Beneficial Associations, § 1.  
 Of corporate franchises. See Corporations, §§ 70, 71.  
 Of corporate stock for nonpayment of subscription. See Corporations, § 17.  
 Of curtesy. See Curtesy, § 11.  
 Of insurance. See Insurance, § 22.  
 Of lease. See Landlord and Tenant, § 13.  
 Of mining claim. See Mines and Minerals, § 10.  
 Of payments made on contract to purchase land. See Vendor and Purchaser, § 1.

**§ 1. Equitable Relief Against.**

Basis of equity jurisdiction. 86: 48.  
 Accident, mistake or fraud. 86: 49.  
 Willfulness and negligence. 86: 50.  
 Time for performance. 86: 50.  
 Conditions precedent and subsequent. 86: 52.  
 Compensation. 86: 53.  
 Waiver. 86: 54.  
 Forfeiture of lease. 86: 54.  
 — Of deeds. 86: 55.  
 — Of mortgages. 86: 58.  
 — Of corporate stock. 86: 60.  
 — Of insurance policies. 86: 61.  
 — Of notes and bonds. 86: 62, 63.  
 — Statutory forfeitures. 86: 63.

**FORGERY.**

Forged writing as color of title. See Adverse Possession, § 10.  
 Rights and remedies on payment of forged bank check. See Banks and Banking, § 10.  
 Recovery of payment of check procured through forged indorsement. See Banks and Banking, § 11.  
 Of certified check. See Banks and Banking, § 5.  
 As ground for cancellation of writings in equity. See Cancellation of Instruments, § 3.  
 Forged or altered entries in judgment as ground for collateral attack. See Judgment, § 27.

**§ 1. Instruments Subject to.**

General rule. 8: 466.  
 Illustrations. 8: 467, 469.

**§ 2. Uttering Sufficient to Sustain Conviction.**

What constitutes uttering. 119: 317.  
 Knowledge of falsity and intent to defraud. 119: 318.  
 Recording instrument. 119: 319.  
 Pleading instrument. 119: 320.

**FORMAL REQUISITES.**

Of account stated. See Account Stated, § 1.  
 Of certificate of acknowledgment. See Acknowledgment, § 3.  
 Of indorsement of commercial paper. See Bills and Notes, § 4.  
 Of chattel mortgage. See Chattel Mortgages, § 2.  
 Of deeds. See Deeds, § 2.  
 Of notice to quit. See Forcible Entry and Detainer, § 3.  
 Of dying declarations. See Homicide, § 22.  
 Of proof of death. See Insurance, § 37.  
 Of application of payment. See Payment, § 14.  
 Of pleading. See Pleading, §§ 1-4.  
 Of will. See Wills, § 2.  
 Of subpoena duces tecum. See Witnesses, § 3.

Of holographic will. See Wills, § 9.  
 Of nuncupative will. See Wills, § 10.  
 Of joint, mutual or reciprocal will. See Wills, § 7.

**FORMER JEOPARDY.**

Rule against. See Criminal Law, § 15.  
 When jeopardy commences. See Criminal Law, § 16.  
 Identity of defendants. See Criminal Law, § 17.  
 Identity of offenses. See Criminal Law, § 18.  
 Identity of sovereigns or laws offended. See Criminal Law, § 19.  
 Waiver or estoppel to plead. See Criminal Law, § 20.

**FORMER TESTIMONY.**

Admissibility of testimony of absent or deceased witness given in former proceeding. See Criminal Law, § 36.  
 Admissibility of evidence given in other proceedings. See Evidence, § 30.

**FORNICATION.**

IN GENERAL, § 1.  
 NATURE AND ELEMENTS OF OFFENSE, § 2.  
 INDICTMENT AND INFORMATION, § 3.  
 ADMISSIBILITY OF EVIDENCE, § 4.  
 SUFFICIENCY OF EVIDENCE, § 5.

**§ 1. In General.**

Definitions. 139: 365.  
 Instructions. 139: 378.  
 Defense of former acquittal. 139: 378.

**§ 2. Nature and Elements of Offense.**

Definitions. 139: 365.  
 Common law. 139: 366.  
 Canon or ecclesiastical law. 139: 366.  
 American statutes. 139: 366.  
 Open and notorious acts. 139: 367.  
 Guilty intent. 139: 369.

**§ 3. Indictment and Information.**

In general. 139: 369.  
 Surplusage. 139: 369.  
 Living together. 139: 369.  
 Joint indictment. 139: 369.  
 Guilty intent. 139: 370.  
 Particular statutory requirements. 139: 370.  
 Meaning of cohabit. 139: 370.  
 Description of parties. 139: 371.  
 Time of offense. 139: 371.  
 Negating marriage. 139: 371.

**§ 4. Admissibility of Evidence.**

In general. 139: 373.  
 Anterior acts. 139: 373.  
 Declarations and confessions. 139: 373.

Conduct of parties. 139: 374.  
 Impeachment of witness. 139: 374.  
 Graver offense. 139: 375.  
 Circumstantial evidence. 139: 375.

### § 5. Sufficiency of Evidence.

In general. 139: 376.  
 Silence. 139: 376.  
 Alibi. 139: 377.  
 Corroboration. 139: 377.

## FOUNDATIONS.

Right to lateral support for. See Adjoining Land Owners, § 1.

## FOURTEENTH AMENDMENT.

Considered with reference to special privileges, burdens and restrictions. See Constitutional Law, § 21.

## FRANCHISES.

Forfeiture of corporate franchise. See Corporations, §§ 70, 71.  
 Taxation of. See Taxation, § 8.

### § 1. Nature and Kinds.

General character and kinds. 131: 862.  
 Franchise as a privilege. 131: 864.  
 Franchise as property. 131: 865.  
 Franchise as easement. 131: 866.

### § 2. Right to Transfer Public Franchises.

Nontransferability of franchises. 35: 390.  
 Foundation of rule. 35: 392.  
 Transfer illegal because a delegation of power. 35: 392.  
 Franchise as public trust. 35: 393.  
 Grantee bound to perform public duties. 35: 394.  
 Can only be transferred with legislative authority. 35: 394.  
 Transfers tending to monopolies. 35: 395.  
 Sequestration of profits by courts of equity. 35: 396.  
 Transfer under legislative authority. 35: 397.  
 Meaning and effect of transfer. 35: 397.  
 Methods of transfer—Sale. 35: 397.  
 — Mortgage foreclosure sale. 35: 397.  
 — Judicial or execution sale. 35: 401.  
 — Lease. 35: 402.

— Consolidation of corporations. 35: 403.  
 Particular franchises—Power of eminent domain. 35: 403.  
 — Right to receive municipal aid. 35: 404.  
 — Immunity from taxation. 35: 404.  
 Transfer of property essential to exercise of franchise. 35: 405.

## FRANCHISE TAX.

As impairment of obligation of contract. See Constitutional Law, § 15.

## FRAUD.

In assignment for creditors. See Assignments for Benefit of Creditors, § 2.  
 Status of person procuring transportation through fraud. See Carriers, § 38.  
 Fraudulent overissue of stock. See Corporations, § 11.  
 Damages for. See Damages, § 5.  
 As basis of liability for spread of contagion. See Health, § 1.  
 Invalidity of marriage procured by. See Marriage, § 4.  
 False ratings by or to commercial agencies. See Mercantile Agencies, § 1.  
 Manufacturer's liability to third persons for fraudulent concealment. See Negligence, § 9.  
 As ground for reformation of writing. See Reformation of Instruments, § 4.  
 Constructive trust created by. See Trusts, § 3.  
 Devises or legacies induced by create devisee or legatee ex maleficio. See Wills, § 54.

### § 1. In General.

Right to waive tort and sue in assumpsit for fraud. 134: 194.  
 Nature and history of confidence game. 134: 363, 366.  
 Carelessness as bar to relief. 32: 384—387.

### § 2. Misrepresentations not Made Directly to Plaintiff.

General principles. 85: 369.  
 Joint parties or owners. 85: 371.  
 Principal and agent. 85: 372.  
 Vendor and purchaser, partners, insured and beneficiary. 85: 373.  
 Property sold for use of others. 85: 375.  
 Mortgagor and mortgagee. 85: 375.  
 Representations of financial responsibility. 85: 375.  
 — To and by commercial agency. 85: 383.  
 By promoters of corporations. 85: 385.

- Prospectuses. 85: 386.
- Statements in stock exchange. 85: 388.

Condition of bank or insurance company. 85: 388, 391.

### § 3. Action for False Representations.

Right of action in general. 18: 555.

Benefit to party making representation immaterial. 18: 555.

Representation must be false when made. 18: 555.

Representation may be by acts as well as words. 18: 555.

Suppression of truth. 18: 556.

Opinion as representation. 18: 556.

Representation as to value of property. 18: 556.

Representation as to quantity of land. 18: 557.

Representation as to financial ability. 18: 558.

Representation of law. 18: 559.

Must be of material fact. 18: 559.

Need not be sole inducement. 18: 559.

Knowledge of falsity. 18: 559.

— Not presumed. 18: 560.

Intent to deceive necessary. 18: 561.

Reliance upon representation. 18: 561.

Damage must result. 18: 561.

Damage must be proximate consequence. 18: 561.

Measure of damages. 18: 562.

Representations in prospectuses. 18: 562.

Representations intended to be communicated to another. 18: 562.

Liability of public officers. 18: 562.

Action not barred by retaining proceeds. 18: 562.

Waiver of right of action. 18: 563.

## FRAUDS, STATUTE OF.

### IN GENERAL, § 1.

### PROMISE TO PAY DEBT OF ANOTHER, § 2.

### WHAT IS CONTRACT TO ANSWER FOR DEBT OF ANOTHER, § 3.

### AGREEMENTS NOT TO BE PERFORMED WITHIN A YEAR, § 4.

### PAROL LEASE FOR MORE THAN ONE YEAR, § 5.

### ACCEPTANCE OF GOODS, § 6.

### PART PAYMENT OF PURCHASE PRICE, § 7.

### WHAT CONSTITUTES CONTRACT FOR SALE OF LAND, § 8.

### PERSONS TO WHOM STATUTE IS AVAILABLE, § 9.

### WHEN AND HOW THE STATUTE MUST BE PLEADED, § 10.

### ESTOPPEL TO PLEAD, § 11.

Effect of statute on account stated. See Account Stated, § 1.

Memorandum of bid at auction sale. See Auctions and Auctioneers, § 6.

When consideration of contract must be expressed in it. See Contracts, § 1.

Applicable to sale of timber. See Deeds, § 15.

Validity of verbal agreement for permanent employment. See Master and Servant, § 2.

Effect on right to reform writing. See Reformation of Instruments, § 4.

Parol trusts. See Trusts, §§ 2-5.

Recovery of money paid for purchase of land under contract void under statute of frauds. See Vendor and Purchaser, § 12.

Necessity that contract to make a will be written. See Wills, § 12.

### § 1. In General.

Applicability to account stated. 136: 47.

### § 2. Promise to Pay Debt of Another.

Contracts of indemnity. 42: 186.

— English decisions. 42: 188.

— American decisions. 42: 191-194.

— Various promises. 42: 191-193.

— Statement of consideration. 42: 194.

### § 3. What is Contract to Answer for Debt of Another.

Necessity for subsisting binding obligation to the promisee. 126: 488.

Consideration of intent of parties. 126: 492.

To whom credit was given. 126: 492.

When promise is beneficial to promisor. 126: 494.

New consideration beneficial to promisor. 126: 497.

Discharge of original debtor. 126: 505.

Promise of debtor to discharge debt. 126: 509.

Obligation of promisor independent of liability of principal. 126: 510.

Contracts of indemnity. 126: 512.

Miscellaneous illustrations. 126: 516.

### § 4. Agreements not to be Performed Within a Year.

Agreements indefinite as to time of performance. 138: 590.

Agreements dependent upon the happening of a contingency. 138: 599.

Part performance. 138: 609.

— Ultra year contracts. 138: 610.

— Possibility of performance by one party. 138: 610.

Computation of period of performance. 138: 611.

**§ 5. Parol Lease for More Than One Year.**

Generally void. 17: 752.  
 Year must commence at date of contract. 17: 753.  
 Possibility of performance within a year. 17: 753.  
 Valid as lease from year to year. 17: 753, 754.  
 Contract for new and supplemental lease. 17: 755.  
 Part performance. 17: 755, 756.

**§ 6. Acceptance of Goods.**

Necessity. 96: 216.  
 Must be unconditional. 96: 217.  
 Delivery and acceptance of possession. 96: 218.  
 Mere words are insufficient. 96: 218.  
 Acts constituting. 96: 219.  
 Part of goods. 96: 220.  
 Delivery to carrier. 96: 221.  
 Designation of carrier by purchaser. 96: 222.  
 Loss of goods before delivery. 96: 224.  
 By agent or bailee. 96: 224.  
 To person or at place designated by buyer. 96: 225.  
 Constructive acceptance. 96: 226.  
 Rejection of goods. 96: 227.  
 Delivery to one of several joint purchasers. 96: 228.  
 Question for jury. 96: 228.

**§ 7. Part Payment of Purchase Price.**

Ancient and modern distinctions. 125: 394.  
 General rule. 125: 395.  
 Payment need not be in money. 125: 397.  
 Crediting seller's account. 125: 398.  
 Check in payment. 125: 400.  
 Note in payment. 125: 401.  
 Unaccepted tender insufficient. 125: 402.  
 Forfeit money. 125: 402.  
 When payment must be made. 125: 403.

**§ 8. What Constitutes Contract for Sale of Land.**

Contract for ultimate conveyance. 102: 232.  
 Assignment, surrender or rescission. 102: 232.  
 Exchange of lands. 102: 232.  
 Establishment of title. 102: 233.  
 Restrictions and reservations. 102: 233.

Revival of writings. 102: 233.  
 Collateral agreements. 102: 234.  
 — As to quantity of land. 102: 234.  
 — Payment of taxes. 102: 235.  
 — Subsequent agreements. 102: 235.  
 Contracts in which a third person participates. 102: 235.  
 Contract to buy for another. 102: 235.  
 — For corporation to be formed. 102: 236.  
 — At judicial sale. 102: 236.  
 Contract to reconvey. 102: 237.  
 Contract to give vendor part of proceeds of resale. 102: 238.  
 Joint adventure or enterprise—To locate and enter land. 102: 238.  
 — To discover and locate mine. 102: 238.  
 — To purchase land. 102: 239.  
 Marriage settlements. 102: 240.  
 Dower assignments and transfers. 102: 240.  
 Contract to make a will. 102: 240.  
 Contracts concerning expectancies. 102: 241.  
 Auction sales. 102: 241.  
 Judicial sales. 102: 242.  
 Execution sales. 102: 242.  
 Administrators' sales. 102: 243.  
 Foreclosure sales. 102: 243.  
 Redemption from judicial sale. 102: 244.  
 Partition agreements. 102: 245.  
 Boundary settlements. 102: 246.  
 Settlement of rights in litigation. 102: 246.  
 Arbitration submission. 102: 247.  
 Dedication. 102: 247.  
 Condemnation for public use. 102: 247.

**§ 9. Persons to Whom Statute is Available.**

Strangers. 127: 756.  
 Fraudulent intermeddlers and tortfeasors. 127: 766.  
 Insurance companies. 127: 769.  
 Creditors. 127: 770.  
 Vendees and lessees—In general. 127: 772.  
 — Intermediate. 127: 774.  
 Heirs, executors and administrators. 127: 777.  
 Public authorities. 127: 778.

**§ 10. When and How the Statute must be Plead.**

Plaintiff's pleadings. 78: 648.  
 Defendant's pleadings. 78: 650.



Common counts. 78: 652.  
 Demurrer. 78: 653.  
 General denial. 78: 653.  
 Special plea when contract is admitted.  
     78: 657.  
 Sufficiency of special plea. 78: 657.  
 Necessity for pleading. 134: 173.

### § 11. Estoppel to Plead.

Preliminary observations. 134: 173.  
 Necessity for pleading the statute. 134:  
     173.  
 Reasons for estoppel. 134: 173.  
 Dilemma of part performance. 134:  
     174.  
 Change of position or situation. 134:  
     176.  
 Prejudice to person pleading estoppel.  
     134: 177.

## FRAUDULENT CONVEYANCES.

IN GENERAL, § 1.  
 VOLUNTARY CONVEYANCES, § 2.  
 VALIDITY BETWEEN IMMEDIATE PARTIES, § 3.  
 FRAUDULENT KNOWLEDGE OF GRANTEE, § 4.  
 SAME, § 5.  
 BULK SALES OF MERCHANDISE, § 6.  
 CONVEYANCE FROM HUSBAND TO WIFE, § 7.  
 RIGHTS OF CREDITORS OF HUSBAND TO INCREASED VALUE OF WIFE'S ESTATE, § 8.  
 RELIEF FROM CONVEYANCE AFTER DEATH OF GRANTEE, § 9.  
 PROOF OF FRAUD, § 10.  
 PRESUMPTION THAT VOLUNTARY CONVEYANCE IS IN FRAUD OF CREDITORS, § 11.  
 As color of title. See Adverse Possession, § 10.  
 Fraudulent assignments for creditors. See Assignments for Benefit of Creditors, § 2.  
 Cancellation of. See Cancellation of Instruments, § 2.  
 Conveyances by husband in fraud of rights of wife. See Husband and Wife, § 9.  
 Conveyances in contravention of insolvent laws. See Insolvency, § 1.  
 Proceedings to prevent debtor from departing or removing property from jurisdiction. See No Execut, §§ 1-4.

### § 1. In General.

When a policy of life insurance is in fraud of creditors. 29: 360.  
 Right of purchaser at execution sale to proceed in equity to set aside conveyance of judgment debtor.  
     110: 81.

### § 2. Voluntary Conveyances.

What transfers are voluntary. 14: 739.

What creditors may attack transfer.  
     14: 743.

— Prior and subsequent creditors.  
     14: 745.

— Subsequent creditors. 14: 750-754.

Test of validity is intent of grantor.  
     14: 747.

Transfers to wife and children. 14:  
     749.

Transfers by solvent creditor. 14: 750.

### § 3. Validity Between Immediate Parties.

Deeds, contractions and transactions in fraud of creditors are valid between original parties. 3: 728.

Rights of heirs and assigns of parties.  
     3: 729.

Executed and executory contracts. 3:  
     729.

Right of estate to impeach or defend on ground of fraud. 3: 740.

Exceptions to rule holding contract valid. 3: 740.

Miscellaneous. 3: 745.

### § 4. Fraudulent Knowledge of Grantee.

Knowledge of facts putting on inquiry.  
     20: 632.

Notorious insolvency. 20: 633.

Burden of proving. 20: 633.

As question for jury. 20: 633.

### § 5. Same.

Necessity that purchaser participate in fraudulent intent. 34: 395.

Known insolvency of grantor. 34: 396.

Right of creditor knowing insolvency to secure himself. 34: 396.

Participation or knowledge of third person. 34: 398.

Knowledge of facts sufficient to put on inquiry. 34: 399.

Proof of knowledge. 34: 402.

Voluntary conveyances. 34: 402.

Purchaser from fraudulent grantee. 34:  
     403.

### § 6. Bulk Sales of Merchandise.

Validity of statutes regulating sales of stock of merchandise in bulk.  
     101: 986.

### § 7. Conveyance from Husband to Wife.

Relation of husband and wife as element of fraud. 90: 499.

Indebtedness of husband as element of fraud. 90: 501.  
 — Effect as to subsequent creditors. 90: 502.  
 — Provision for payment of debts. 90: 502.  
 — Sufficiency of property retained by husband. 90: 502.  
 Insolvency as element of fraud. 90: 503.  
 — Effect as to subsequent creditors. 90: 504.  
 — Subsequent insolvency. 90: 504.  
 — When immaterial. 90: 505.  
 Intent to defraud creditors. 90: 505.  
 — Effect as to subsequent creditors. 90: 506.  
 Wife's knowledge of fraudulent intent. 90: 508.  
 Antenuptial agreements generally. 90: 509.  
 — Conveyance in consideration of marriage. 90: 509.  
 — Conveyance after marriage pursuant to prior agreement. 90: 510.  
 — Effect as to subsequent creditors. 90: 511.  
 Postnuptial settlements—Consideration. 90: 511.  
 — Consideration of property acquired by marriage. 90: 513.  
 — Consideration of release of dower. 90: 513.  
 — Effect as to subsequent creditors. 90: 514.  
 Consideration as affecting validity—Necessity. 90: 514.  
 — Voluntary conveyance. 90: 515.  
 — Illegal consideration. 90: 518.  
 — Fictitious consideration. 90: 518.  
 — Purchase by husband deed to wife. 90: 518, 519.  
 — Purchase by wife. 90: 520.  
 — Consideration moving from wife. 90: 521-524.  
 — Sufficiency. 90: 525-533.  
 — Pre-existing liability. 90: 534.  
 — Gift to husband. 90: 539.  
 — Money loaned to husband. 90: 540.  
 — Use of wife's separate property. 90: 541.  
 Conveyance by or through third person. 90: 543.  
 Possession—Retention by husband. 90: 544.  
 Right to prefer wife as creditor. 90: 547.

Laches of wife in enforcing debt. 90: 548.  
 Burden of proof—As to fraud. 90: 550.  
 — As to consideration. 90: 553.

### § 8. Rights of Creditors of Husband to Increased Value of Wife's Estate.

Expenditures for improvement of wife's land. 77: 92.  
 Improving wife's land by labor. 77: 97.  
 Increasing value through management. 77: 100.  
 Making part payment on wife's property. 77: 108.

### § 9. Relief from Conveyance After Death of Grantor.

Right of executor or administrator to possess or recover property. 135: 330-336.  
 Right of creditors to pursue property. 135: 336.  
 Conditions precedent to setting aside conveyance. 135: 338.  
 Rights of subsequent creditors. 135: 339.  
 Rights of creditors of nonresident decedent. 135: 340.  
 Effect of conveyance by fraudulent grantees. 135: 340.  
 Disposition of property after conveyance is set aside. 135: 341.

### § 10. Proof of Fraud.

Province of jury. 11: 757.  
 Burden of proof. 11: 758.  
 Sufficiency of evidence. 11: 759.  
 Badges of fraud. 11: 759.  
 Fraud between fiduciaries. 11: 759.

### § 11. Presumption That Voluntary Conveyance is in Fraud of Creditors.

Existing creditors. 119: 556.  
 Subsequent creditors. 119: 557.

### FREE SPEECH.

Guaranty of. See Criminal Law, § 1.  
 Not infringed by civil service laws. See Municipal Corporations, § 9.

### FREE TRANSPORTATION.

Status of person riding on. See Carriers, § 38.

**FREEZERS.**

See Warehousemen.

Distinguished from "cold storage rooms" and duties in storing perishables stated. 136: 234, 235.

**FREIGHT CARRIERS.**

See Carriers, §§ 5-24.

**FRENCH POOLS.**

As gambling devices. See Gaming, § 5.

**FRIENDLY FIRE.**

What constitutes. See Insurance, § 10.

**FRIGHT.**

As element of damages. See Damages, § 7.

**FRIGHTENING ANIMALS.**

By emission of steam from railroad engine.  
See Railroads, § 10.

**FUGITIVE FROM JUSTICE.**

Who is. See Extradition, § 4.

**FUMES AND VAPORS.**

Emanating from adjoining lands. See Adjoining Land Owners, § 2.

**FUNERAL PROCESSIONS.**

Law of the road governing. See Highways, § 9.

**FUTURE ADVANCES.**

Mortgage for. See Mortgages, § 5.

**FUTURE CONDITIONAL ESTATES.**

Partition of. See Partition, § 2.

**FUTURE DISPUTE.**

Validity of agreement to submit future dispute to arbitration. See Arbitration and Award, § 1.

**FUTURE EARNINGS.**

Right to assign. See Assignment, § 2.

**FUTURES.**

Sale of futures and stock-jobbing. See Gaming, § 2.

**GAME.**

Domestic animals. See Animals.

Enjoining hunting on private property. See Injunction, § 4.

**§ 1. In General.**

Validity of statute prohibiting importation of game during closed season. 128: 534-540.

Police power of state to regulate and protect game. 42: 138.

Right to hunt on the land of another. 13: 416-420.

**GAMING.**

IN GENERAL, § 1.

SALE OF FUTURES, § 2.

DEFENSES AVAILABLE AGAINST OBLIGATIONS BASED ON GAMBLING TRANSACTION, § 3.

GAMBLING GAMES, § 4.

GAMBLING DEVICES, § 5.

WAGERS AND THEIR VALIDITY, § 6.

See Lotteries.

**§ 1. In General.**

Definition and essentials. 121: 694.

Loans for gambling purposes. 1: 302.

**§ 2. Sale of Futures:**

Contract for sale of articles for future delivery. 1: 752.

Stock-jobbing statutes. 1: 752.

Seller need not own property at time of sale. 1: 757.

Wagering sales are void. 1: 758.

Intention of parties governs validity. 1: 760.

Form of contract does not control. 1: 762.

Evidence of illegality. 1: 764.

Broker's right to commissions and advances. 1: 764.

**§ 3. Defenses Available Against Obligations Based on Gambling Transaction.**

At common law. 119: 172.

Modern doctrine—Between original parties. 119: 173.

Against assignee with notice. 119: 175.

Against bona fide assignee. 119: 176.

Presumption as to bona fides. 119: 178.

Obligation given to secure loan for gambling. 119: 178.

Collateral contracts. 119: 179.

— Sales, conveyances and judgments. 119: 180.

Renewals and compromises. 119: 180.

Defenses in equity. 119: 180.

**§ 4. Gambling Games.**

Backgammon and bagatelle. 121: 694.

Billiards and pool. 121: 695.

Cards, chips, cockfights and tests of skill. 121: 696.

Craps and horseracing. 121: 697.

Keno and lotteries. 121: 698.  
 Common gaming and playing for drinks.  
     121: 699.  
 Raffleing. 121: 699.  
 Tenpins and bowling. 121: 699.  
 Fantan and thimble. 121: 700.

### § 5. Gambling Devices.

Gaming, poker and crap tables. 121:  
     700, 701.  
 Chuckaluck. 121: 701.  
 Cards, cracklo and dice. 121: 702.  
 Gun and target. 121: 702.  
 Keno. 121: 702.  
 Horseracing and book-making. 121:  
     703.  
 Lotto. 121: 703.  
 Paris mutuals. 121: 703.  
 Stock clocks. 121: 703.  
 Slot-machines. 121: 703.  
 Summary seizure and destruction of  
     gambling devices. 104: 1011.

### § 6. Wagers and Their Validity.

Definitions and illustrations. 37: 697.  
 Wagers on horseraces. 37: 701.  
 Election bets. 37: 702.

## GARAGES.

License on keepers of. See Licenses, § 1.

## GARBAGE.

Power of city to grant monopoly for removal  
 of. See Monopolies, § 2.  
 Police power of cities to regulate removal of  
 garbage. See Municipal Corporations, § 3.

## GARMENTS.

Exempt from execution. See Exemptions, § 4.

## GARNISHMENT.

IN GENERAL, § 1.  
 SITUS OF PROPERTY FOR PURPOSE OF,  
     § 2.  
 PERSONS SUBJECT TO, § 3.  
 — CARRIERS, § 4.  
 Pendency of other proceedings as ground for  
 abatement. See Abatement and Revival,  
     § 1.  
 Right of garnishee to appeal. See Appeal  
 and Error, § 2.  
 Of funds in bank represented by certified  
 check. See Banks and Banking, § 5.  
 Intervention in. See Parties, § 3.

### § 1. In General.

Pension money. 2: 596-598.  
 Defenses available to garnishee. 19:  
     737.  
 As satisfaction of principal debt. 77:  
     542-545.

### § 2. Situs of Property for Purpose of.

In general. 69: 113.  
 Debts. 69: 114.  
 — Place where debt is payable. 69:  
     115.  
 — Residence of creditor. 69: 117.  
 Power of state over debts due nonresi-  
     dents. 69: 118.  
 Debt due from foreign corporation to  
     nonresident. 69: 120.  
 Debt due from resident to nonresident.  
     69: 124.  
 Property in transit. 69: 125.  
 — To place outside state. 69: 127.

### § 3. Persons Subject to.

State or federal government. 51: 114.  
 Municipal corporations. 51: 114.  
 — Cases sustaining right to garnish.  
     51: 117.  
 Counties. 51: 119.  
 School districts. 51: 120.  
 Townships. 51: 121.  
 District of Columbia. 51: 121.

### § 4. — Carriers.

Goods in transit. 50: 465.  
 Goods awaiting transportation. 50:  
     466.  
 Goods awaiting delivery. 50: 467.

## GAS.

Waste of natural gas may be declared crim-  
 inal. See Criminal Law, § 1.  
 As a necessary of life. See Monopolies, § 1.  
 Power of cities to manufacture gas for use  
 on streets and sale to citizens. See Munic-  
 ipal Corporations, § 1.  
 Taxation for construction of municipal gas-  
 works. See Taxation, § 3.

### § 1. In General.

Gas mains and pipes as additional  
 servitude. 106: 266.  
 Care required to prevent escape or ex-  
 plosion of gas. 135: 411.

## GASOLINE.

Liability of persons keeping. See Explo-  
 sives, § 1.

## GATES.

Right to maintain gates on highways. See  
 Highways, § 4.

## GEESE.

See Game, § 1.

## GENERAL BEQUESTS.

Nature and essentials. See Wills, § 45.

**GENERAL DENIAL.**

Right to plead statute of frauds by. See Frauds, Statute of, § 10.

**GENERAL DEPOSITS.**

Lien of bank on. See Banks and Banking, § 12.

**GENERAL ELECTION.**

Notice or proclamation of. See Elections, § 4.

**GENERAL GUARANTY.**

What constitutes. See Guaranty, § 2.

**GENERAL LAWS.**

What are. See Statutes, § 5.

**GENERAL LIEN.**

Of attorney for services. See Attorney and Client, § 15.  
Of banks on funds of depositor. See Banks and Banking, § 13.

**GEOGRAPHICAL NAMES.**

As trade names. See Trademarks and Trade Names, § 2.

**GEOGRAPHY.**

Judicial notice of geographical facts. See Evidence, §§ 1, 3.

**GHOSTS.**

Belief in ghosts as insane delusion. See Insane Persons, § 1.

**GIFT ENTERPRISES.**

Power to declare criminal. See Criminal Law, § 1.  
As lottery. See Lotteries, § 1.  
Use of mails by. See Postoffices, § 3.

**GIFTS.**

Gifts to attorneys. See Attorney and Client, § 5.  
By infants. See Infants, § 1.  
Application of rule against perpetuities to gifts to a class. See Perpetuities, § 2.  
Reformation of gift deeds. See Reformation of Instruments, § 1.  
Distinguished from voluntary trusts. See Trusts, § 4.  
Voluntary trusts. See Trusts, §§ 4, 5.  
Conditions in gifts in restraint of marriage or favoring divorce. See Wills, § 43.

**§ 1. In General.**

To spiritual medium. 1: 88.

**§ 2. Gift of Bank Pass-book.**

Requisites of gift causa mortis. 51: 445.

Savings bank-book. 51: 445, 446.  
Commercial bank-book. 51: 447.

**§ 3. Causa Mortis.**

Definition and requisites. 99: 891.

When title passes. 99: 892.

Distinguished from legacy. 99: 894.

Distinguished from gifts inter vivos. 99: 894.

Delivery—Parting with possession and control. 99: 895.

— Necessity for actual or constructive delivery. 99: 896.

— By deed or other writing. 99: 897.

— Instances. 99: 898.

— Giving key to receptacle. 99: 899.

— Possession of donee. 99: 899.

— Who may deliver. 99: 900.

— To whom delivery may be made. 99: 900.

— Mistake or partial delivery. 99: 901.

— Delivery of bank-book. 99: 902, 903.

— Deposit in name of donee. 99: 904.

— Deposit in name of donor and donee. 99: 904.

Expectation of death—Necessity. 99: 905.

— General impression insufficient. 99: 906.

— Illness. 99: 906.

— Contemplation of suicide. 99: 906.

Condition that donor does not recover. 99: 907.

Property subject to gift. 99: 908.

— Real property. 99: 908.

— Choses in action. 99: 908.

— Commercial paper. 99: 908.

— Stock certificates. 99: 911.

— Policy of insurance. 99: 911.

— Debts due from donee. 99: 912.

Annexing conditions. 99: 913.

Revocation. 99: 913.

— By will. 99: 913.

— By birth of heir or recovery from illness. 99: 914.

Validity—Law governing. 99: 914.

Rights of creditors. 99: 915.

Evidence to establish. 99: 915.

— Burden of proof. 99: 916.

— Declaration of donor. 99: 916.

— Letters of donor. 99: 917.

— Declarations of donee. 99: 918.

**GOATS.**

See Animals.

**GOOD FAITH.**

Essential to adverse possession. See Adverse Possession, § 9.  
 Bona fide purchaser of land without notice of outstanding claims. See Vendor and Purchaser, §§ 4, 5.

**GOOD HEALTH.**

What constitutes. See Insurance, § 19.

**GOODWILL.****§ 1. Assignment.**

Assignment of. 17: 496.

**§ 2. Secret Process and Trade Secrets.**

Judicial protection of property rights in secret processes and trade secrets. 133: 759-768.

**§ 3. Of Partnership.**

Defined. 96: 610.  
 Right to use the firm name. 96: 611.  
 Distinction between commercial and professional firm. 96: 612.  
 As partnership asset. 96: 613.  
 Sale by one partner to another—Right of seller to set up business. 96: 613.  
 — Personal solicitation. 96: 614.  
 Valuation. 96: 616.  
 When goodwill does not attach. 96: 618, 619.  
 How made productive on dissolution of firm or death of partner. 96: 617, 618.

**GOVERNMENTAL POWERS.**

Division of. See Constitutional Law, § 2.

**GOVERNMENT HOMESTEAD.**

Mortgage by homesteader. See Mortgages, § 4.

**GOVERNMENT SURVEY.**

Conclusiveness of lines run by. See Boundaries, § 9.

**GOVERNOR.**

Mandamus to control acts of. See Mandamus, § 7.

**GRADING STREETS.**

Liability for change of goods. See Municipal Corporations, § 27.

**GRAIN.**

Intermixture of grain belonging to different owners. See Confusion of Goods, § 2.  
 Duty of warehousemen storing. See Warehousemen, § 6.

**GRAIN ELEVATORS.**

See Warehousemen.

Storage of grain in bulk. 136: 238.  
 Loss by weevils and bugs. 136: 232.

**GRAND JURY.**

Petit jury. See Jury.

**§ 1. General Note.**

Qualifications and competency. 12: 900.  
 Construction of exemption statutes. 12: 902.  
 Summoning and drawing. 12: 902.  
 Talesmen, reassembling and filling panel. 12: 903.  
 Requisite number and concurrence. 12: 904.  
 Proof of due organization. 12: 904.  
 Oath. 12: 905.  
 Challenge to the array. 12: 905.  
 Challenge for cause. 12: 906.  
 Challenge for opinions or bias. 12: 906.  
 Time and mode of challenging. 12: 907.  
 When objection may be by plea in abatement. 12: 909.  
 Powers and duties of grand jurors. 12: 911.  
 Secrecy of grand jury-room. 12: 914.  
 Grand jurors as witnesses and disclosure of proceedings by others. 12: 915.  
 Civil liability of jurors. 12: 919.  
 Discharge of jury. 12: 919.

**GRASS.**

See Crops.

Right to grass growing in highways. See Highways, § 4.

**GRATUITOUS GUARANTY.**

Distinguished from paid guaranty. See Guaranty, § 1.

**GRATUITOUS SURETYSHIP.**

Distinguished from paid suretyship. See Principal and Surety, § 2.

**GRAVEL.**

Discovery of pay gravel necessary to constitute mine discovery. See Mines and Minerals, § 2.

**GRAVEYARDS.**

See Cemeteries.

## GRAZING CATTLE.

On uninclosed land. See Animals, § 5.  
On highways. See Highways, § 4.  
Enjoining. See Injunction, § 4.

## GRIST-MILLS.

Taxation for. See Taxation, § 3.

## GROUND.

For expulsion from association. See Associations, § 2.  
For dissolution of attachment. See Attachment, § 6.  
For disbarment of attorneys. See Attorney and Client, § 3.  
For cancellation of written instruments in equity. See Cancellation of Instruments, §§ 3-5.  
For expulsion of stockholder. See Corporations, § 29.  
For divorce. See Divorce, §§ 1-5.  
For refusal of extradition papers. See Extradition, § 3.  
For opening or vacating judgment. See Judgment, § 15.  
For dissolution of partnership. See Partnership, § 23.  
For issuances or refusal of writ of prohibition. See Prohibition, §§ 2, 5.  
For reformation of instruments. See Reformation of Instruments, § 4.  
For expulsion of school pupil. See Schools and School Districts, § 5.

## GROWING CROPS.

See Crops.

Mortgage of. See Chattel Mortgages, § 6.

## GUARANTEED STOCK.

As preferred stock. See Corporations, § 19.

## GUARANTY.

DEFINED AND DISTINGUISHED FROM OTHER CONTRACTS, § 1.  
CLASSES AND KINDS OF GUARANTIES, § 2.  
SIGNATURE, DELIVERY AND ACCEPTANCE, § 3.  
CONSIDERATION, § 4.  
CONSTRUCTION OF CONTRACT, § 5.  
NOTICE OF DEFAULT, § 6.  
GUARANTY OF COLLECTION, § 7.  
DISCHARGE OF GUARANTOR, § 8.  
Deposit of guaranty in escrow. See Escrows, § 2.  
Fidelity insurance. See Insurance, §§ 47-53.  
Reformation of contract of guaranty. See Reformation of Instruments, § 1.

### § 1. Defined and Distinguished from Other Contracts.

Defined. 105: 502.  
Illustrated. 105: 503.  
Distinguished from suretyship. 105: 503.

Distinguished from warranty. 105: 506.

Distinguished from indorsement. 105: 507.

Difference between guaranty entered into for a valuable consideration and that entered into gratuitously. 98: 844.

### § 2. Classes and Kinds of Guaranties.

Special and general. 105: 521.  
Absolute and conditional. 105: 522.  
Continuing and limited. 105: 522.  
— Illustrated. 105: 524.

### § 3. Signature, Delivery and Acceptance.

Signature and delivery. 105: 512.  
Necessity for acceptance. 105: 513.  
Notice of acceptance. 105: 514, 516.  
Time of notice. 105: 516.  
Excuse and waiver of notice of acceptance. 105: 516.

### § 4. Consideration.

Necessity. 105: 507.  
Existence of valid principal obligation. 105: 508.  
Principal contract as. 105: 509.  
New and original consideration. 105: 510.  
Forbearance. 105: 510.  
Giving credit or delivering goods. 105: 511.  
Other considerations. 105: 512.

### § 5. Construction of Contract.

Strict construction. 105: 519.  
Reasonable construction. 105: 520.  
Extrinsic evidence to aid. 105: 520.  
Construction against guarantor. 105: 521.  
Intention and understanding of parties. 105: 521.

### § 6. Notice of Default.

Necessity. 105: 516.  
Sufficiency. 105: 519.  
Effect of failure to give. 105: 519.

### § 7. Guaranty of Collection.

Definition and nature of undertaking. 64: 393.  
Suit on claim prerequisite to liability. 64: 395.  
Diligence required to collect. 64: 396.  
— Law of the place determines. 64: 399.

Discharge of guarantor. 64: 399.  
 Consideration. 64: 401.  
 Notice. 64: 401.  
 Possess by assignment of debt. 64: 401.  
 Actions to enforce liability of guarantor. 64: 402.

### § 8. Discharge of Guarantor.

Matters existing at or prior to entering into the contract. 63: 327-338.

### GUARDIAN AD LITEM.

Authority to enter into accord and satisfaction. See Accord and Satisfaction, § 6.  
 Right to prosecute appeal. See Appeal and Error, § 2.  
 For infant litigant. See Infants, § 8.

### GUARDIAN AND WARD.

GENERAL NATURE AND EXTENT OF GUARDIANSHIP AT COMMON LAW, § 1.

KINDS OF GUARDIANSHIP, § 2.

TRANSACTIONS INVOLVING PERSONAL INTEREST—COMMON-LAW GUARDIANSHIP, § 3.

COMMON-LAW POWERS OVER WARD'S PERSON, § 4.

COMMON-LAW POWERS OVER PERSONAL PROPERTY, § 5.

COMMON-LAW POWER TO COLLECT DEBTS, § 6.

COMMON-LAW POWER TO CONTRACT, § 7.

COMMON-LAW POWER TO MAKE INVESTMENTS AND LOANS, § 8.

COMMON-LAW POWER TO MAKE DEPOSITS, § 9.

COMMON-LAW POWER OVER REAL PROPERTY, § 10.

ACTIONS BY COMMON-LAW GUARDIANS, § 11.

COMMON-LAW GOVERNING MAINTENANCE OF WARD, § 12.

SALES, § 13.

Guardianship proceedings against nonresidents. See Absentees, § 1.

Guardian's deed as color of title. See Adverse Possession, § 10.

Right of guardian to appeal. See Appeal and Error, § 2.

Guardian as head of family within meaning of homestead law. See Homestead, § 1.

### § 1. General Nature and Extent of Guardianship at Common Law.

Matters covered by—Person and estate of ward. 89: 267.

— Natural guardianship extends only to person. 89: 268.

Nature of powers—Whether coupled with an interest. 89: 269.

— Title remains in ward. 89: 270.

— Title to negotiable paper payable to guardian. 89: 270.

Territorial extent of powers. 89: 271.

— Right of foreign guardian to custody of ward. 89: 271.

— Right to sue in foreign courts. 89: 272.

— Property in foreign jurisdiction. 89: 273.

— Exercise of comity. 89: 273.

### § 2. Kinds of Guardianship.

In general. 89: 261.

Common-law guardianships. 89: 262.

Guardianship in chivalry. 89: 262.

Guardianship in socage—In general. 89: 262.

— Custody of ward. 89: 263.

— Property of ward. 89: 263.

Guardians by nature. 89: 264.

Guardians by nurture. 89: 265.

Guardians by election of infant. 89: 265.

Guardians not created by common law.

— Guardians by custom. 89: 265.

— Guardians by appointment of ecclesiastical courts. 89: 265.

— Chancery guardians. 89: 265.

— Testamentary guardians. 89: 266.

— Guardians of lunatics. 89: 266.

### § 3. Transactions Involving Personal Interest—Common-law Guardianship.

Fiduciary nature of relation. 89: 302.

Dealings with ward. 89: 302.

— After termination of guardianship. 89: 302.

Use of ward's property. 89: 304.

Mingling funds. 89: 304.

Surrendering control of estate. 89: 304.

Contract personally benefiting guardian. 89: 305.

Purchase of claim against estate. 89: 305.

Purchase of outstanding title. 89: 305.

Purchase in individual name with funds of ward. 89: 305.

Payment of individual debt with funds of ward. 89: 306.

Tracing funds converted by guardian. 89: 307.

Purchase by guardian of ward's property. 89: 307.

### § 4. Common-law Powers Over Ward's Person.

Custody of ward—In general. 89: 275.

— Natural guardian. 89: 276.



— Right of courts to control. 89: 276.

Change of ward's domicile. 89: 278.

Marriage of ward. 89: 280.

Recovery for death of ward. 89: 280.

Recovery for seduction of ward. 89: 280.

#### **§ 5. Common-law Powers Over Personal Property.**

Custody. 89: 280.

Sale. 89: 281.

Assignment of chose in action. 89: 281.

Rule in South Carolina. 89: 282.

#### **§ 6. Common-law Power to Collect Debts.**

General rule. 89: 287.

Enforcing payment by suit. 89: 288.

Receipt for payment. 89: 288.

Collection of assets of ward's wife. 89: 288.

What may be received in payment. 89: 289.

Compromise and settlement of claims. 89: 290.

Submission to arbitration. 89: 291.

Waiver or release of ward's rights. 89: 291.

#### **§ 7. Common-law Power to Contract.**

Contracts of guardian—Cannot bind estate. 89: 282.

— Where he contracts as guardian. 89: 284.

— Exemption from personal liability. 89: 284.

— Exceptions to general rule. 89: 285.

— Employment of agents. 89: 298.

Contracts of ward—Do not bind guardian. 89: 286.

— Power of guardian to disaffirm or ratify. 89: 287.

#### **§ 8. Common-law Power to Make Investments and Loans.**

General rule. 89: 292.

Security to be taken. 89: 292.

— Corporate stock. 89: 294.

In trade or business. 89: 295.

Confederate securities. 89: 296.

When investment must be made. 89: 296.

Conflict of laws. 89: 297.

#### **§ 9. Common-law Power to Make Deposits.**

General rule. 89: 297.

Deposits in guardian's name. 89: 297.

#### **§ 10. Common-law Powers Over Real Property.**

Possession. 89: 308.

Leases. 89: 309.

Rents and profits. 89: 310.

Changing nature of estate. 89: 310.

Sale. 89: 311.

Improvements. 89: 312.

Repairs. 89: 313.

Equitable conversion. 89: 313.

Mortgages. 89: 314.

Discharge of encumbrances. 89: 314.

Partition. 89: 315.

#### **§ 11. Actions by Common-law Guardians.**

General rule. 89: 316.

Costs of suit. 89: 316.

Counsel fees. 89: 316.

#### **§ 12. Common-law Governing Maintenance of Ward.**

English rule. 89: 299.

American rule. 89: 299.

— Limited to income. 89: 299.

— Not confined to income of current year. 89: 300.

Court may sanction use of principal. 89: 300.

Court may ratify previous use of principal. 89: 300.

#### **§ 13. Sales.**

Notice of application as affecting validity of sale. 120: 148.

Disqualification of guardian to purchase at his own sale. 136: 802-804.

### **GUARDING MACHINERY.**

Liability of master for failure to guard machinery. See Master and Servant, §§ 8, 9.

### **GUESTS.**

Who are guests at hotels. See Innkeepers, § 1.

### **GUIDES.**

Tools exempt from execution. See Exemptions, § 7.

### **GUNPOWDER.**

Keeping on private premises. See Explosives, § 1.

**GUNS.**

Right to keep and bear. See Weapons, § 1.

**HABEAS CORPUS.**

NATURE AND SUSPENSION OF WRIT, § 1.  
RIGHT TO DISCHARGE AFTER COMMITMENT AND BEFORE TRIAL, § 2.

SCOPE OF REVIEW IN GENERAL, § 3.

REVIEW OF PROCEEDINGS OF PARTICULAR COURTS, § 4.

REVIEW OF INDICTMENTS, INFORMATION AND AFFIDAVITS, § 5.

REVIEW OF PROCEEDINGS AT TRIAL, § 6.

REVIEW OF PROCEEDINGS AT TRIAL, § 6.

To review contempt proceedings. See Contempt, § 5.

For denial of speedy trial. See Criminal Law, § 41.

Mandamus to control proceedings. See Mandamus, § 6.

To try title to office. See Officers, § 12.

Suspension of writ during martial law ordered to quell riot. See Riot, § 1.

**§ 1. Nature and Suspension of Writ.**

Nature and purpose of writ. 87: 168.  
Suspension of writ during insurrection or rebellion necessitating government by martial law. 98: 776.

**§ 2. Right to Discharge After Commitment and Before Trial.**

Attack on jurisdiction. 100: 29.

Inquiry into sufficiency of evidence. 100: 30.

Inquiry into want of probable cause. 100: 33.

Right to speedy trial. 100: 34.

Defective commitment. 100: 34.

Defective indictment. 100: 35.

Extradition. 100: 36-39.

**§ 3. Scope of Review in General.**

Review of final judgments. 87: 169.

Correction of errors. 87: 171.

Jurisdictional questions. 87: 172.

Validity of statutes and ordinances. 87: 174.

Repealed statutes. 87: 176.

Validity of election. 87: 177.

Legal existence of court. 87: 177.

Plea of former jeopardy. 87: 179.

Bastardy proceedings. 87: 179.

Contempt proceedings. 87: 179-184.

Questions concerning preliminary examination. 87: 184.

**§ 4. Review of Proceedings of Particular Courts.**

In general. 87: 198.

Justices of the peace. 87: 198.

Police courts and magistrates. 87: 199.

Mayor's court. 87: 199.

Courts of sister state. 87: 199.

Federal courts. 87: 200.

**§ 5. Review of Indictments, Informations and Affidavits.**

Legality of grand jury. 87: 184.

Sufficiency of indictment or information. 87: 185.

Error respecting indictment. 87: 185.

Necessity for indictment. 87: 186.

Sufficiency of affidavits. 87: 186.

**§ 6. Review of Proceedings at Trial.**

Time and place of trial. 87: 187.

Change of venue. 87: 187.

Presence and arraignment of accused. 87: 187.

Right of accused to counsel. 87: 188.

Refusal or waiver of jury. 87: 188.

Legality of jury. 87: 189.

Refusal of process for witnesses. 87: 189.

Failure to inform accused of his rights. 87: 189.

Sufficiency of verdict. 87: 190.

Force and effect of evidence. 87: 190.

**§ 7. Review of Judgment and Sentence.**

Defective judgments and sentences. 87: 190.

Parties brought from other jurisdictions. 87: 191.

Place of imprisonment. 87: 192.

Premature sentence. 87: 193.

Delay in execution. 87: 193.

Indefinite sentence. 87: 194.

Extent of punishment. 87: 194.

Cumulative and concurrent sentences. 87: 195.

Joint sentences. 87: 196.

Modified sentences. 87: 196.

Defective mittimus. 87: 197.

**HABITATION.**

See Domicile.

Defense of homicide justifying homicide. See Homicide, § 6.

**HACKMEN.**

Right of carrier to grant exclusive privileges to. See Carriers, § 33.

**HACK-STANDS.**

On streets. See Municipal Corporations, § 22.

**HAND BAGGAGE.**

Effect of retention of control by passenger.  
See Carriers, § 59.

**HANDBILLS.**

As evidence of conspiracy. See Conspiracy, § 5.

**HANDWRITING.**

Photographic evidence of. See Evidence, § 22.  
Necessity that holographic will be wholly in handwriting of testator. See Wills, § 9.

**HARMLESS DEFECTS.**

In official bonds. See Officers, § 18.

**HARNESS.**

Exempt from execution. See Exemptions, § 8.

**HARVESTING ICE.**

Right to gather ice in lakes and streams.  
See Waters and Watercourses, § 15.

**HAWKERS AND PEDDLERS.**

Acts of, which may be declared criminal. See Criminal Law, § 1.  
Right to exemptions as laborers. See Exemptions, § 3.

**HAZARDOUS WORK.**

Rights of servant accepting extrahazardous work. See Master and Servant, § 24.

**HEAD OF FAMILY.**

Who is, within meaning of homestead law.  
See Homestead, § 1.

**HEALERS.**

Degree of skill and care required of. See Physicians and Surgeons, § 1.

**HEALTH.**

COMMUNICATION OF DISEASE TO OTHERS, § 1.

POWERS OF BOARDS OF HEALTH, § 2.

QUARANTINE REGULATIONS, § 3.

COMPULSORY VACCINATION, § 4.

Quarantine of animals and liability for spreading contagion. See Animals, §§ 7, 8.  
What constitutes good health. See Insurance, § 19.

Misrepresentation as to health in application for insurance. See Insurance, § 20.

Nuisances injurious to. See Nuisance, § 7.

Taxation for preservation of public health.  
See Taxation, § 3.

### § 1. Communication of Disease to Others.

In general. 47: 552.

Grounds of civil liability—Negligence.  
93: 841.

Necessity for knowledge of presence of disease. 93: 841.

Contributory negligence and assumption of risk. 93: 842.

Fraud and breach of contract as basis of liability. 93: 843.

Instances of liability. 93: 844.

Master to servant. 93: 845.

Master to third persons. 93: 846.

Landlord and tenant. 93: 846.

Sale of diseased animals. 93: 847.

Public officers. 93: 848.

Liability of municipal corporation—  
For nuisance. 93: 848.

— For negligence of officers. 93: 849.

Public policy as affecting recovery for communication of venereal disease during illicit intercourse.  
93: 850.

Contracts, the enforcement of which would expose persons to contagion. 93: 852.

Criminal liability—Exposing public to contagion. 93: 852.

— Communication of venereal disease. 93: 853.

### § 2. Powers of Boards of Health.

In general. 80: 212.

Abatement of nuisances. 80: 214.

— Territorial extent of power. 80: 216.

Notice before abatement of nuisance.  
80: 217.

Conclusiveness of board's declaration of nuisance. 80: 221.

Prohibiting business and regulating use of property. 80: 224.

Quarantine regulations. 80: 227.

Destruction of property. 80: 231.

Vaccination. 80: 230.

Prescribing criminal penalties. 80: 232.

Hospitals and medical examinations.  
80: 233.

Transportation of dead bodies. 80: 234.

Employment of assistants. 80: 234.

Expenses. 80: 234.

### § 3. Quarantine Regulations.

Power of city, state or nation to enact and enforce. 47: 533.

National laws and regulations. 47: 533.

State laws. 47: 536.

Municipal regulations. 47: 540.

Vaccination laws. 47: 546.

Instances of proper regulations. 47: 547.

Liability of municipality or health officers. 47: 548.

Expenses of quarantine and disinfection. 47: 549.

Liability for spreading contagion. 47: 549, 550.

Liability for exposing human being to contagion. 47: 552.

#### § 4. Compulsory Vaccination.

Validity of compulsory vaccination law upheld by federal supreme court. 103: 864-879.

Power of boards of health. 80: 230.

### HEARING.

Of motion to dissolve attachment. See Attachment, § 5.

### HEARSE.

Exempt from execution. See Exemptions, § 8.

### HEIRS.

See Descent.

Proceedings against unknown heirs. See Absentees, § 2.

Right to appeal. See Appeal and Error, § 2.

Right to possession of personalty of ancestor. See Descent, § 2.

Liability for debts of ancestor. See Descent, § 4.

Rights in personalty of ancestor. See Executors and Administrators, § 16.

Right to interpose statute of frauds. See Frauds, Statute of, § 9.

Right to proceeds of policy payable to heirs. See Insurance, § 42.

Rights of omitted heirs. See Wills, § 35.

Right to contest will. See Wills, § 22.

### HERDING ANIMALS.

On uninclosed lands. See Animals, § 5.

### HIDDEN DEFECTS.

Master's liability for hidden defects in machinery or premises. See Master and Servant, § 11.

### HIGH VOLTAGE.

Duty to guard public from wires carrying. See Electricity, § 1.

### HIGHWAY ROBBERY.

See Robbery, §§ 1-3.

### HIGHWAYS.

NATURE AND PURPOSE, § 1.

RIGHT TO COMPEL LABOR ON, § 2.

ACQUISITION BY USE, § 3.

RIGHTS, OBLIGATIONS AND REMEDIES OF ABUTTING OWNERS, § 4.

WHAT ARE ADDITIONAL SERVITUDES, § 5.

LOSS BY ABANDONMENT, § 6.

PURPOSES FOR WHICH HIGHWAY MAY NOT BE USED, § 7.

FRIGHTENING ANIMALS, § 8.

LAW OF THE ROAD, § 9.

LAW OF THE AUTOMOBILE, § 10.

RIGHTS OF PEDESTRIANS, § 11.

Adverse possession of. See Adverse Possession, § 1.

Dedication of. See Dedication, § 2.

Electric poles and wires in. See Electricity, § 2.

Rights and obligations of owners of private roads. See Private Roads, §§ 1, 2.

Roadbed of street railroad as public highway. See Street Railroads, § 2.

Taxation for. See Taxation, § 3.

Right of public to travel over ice. See Water and Watercourses, § 15.

#### § 1. Nature and Purpose.

What constitutes. 57: 744, 745.

Functions and purposes. 106: 234.

#### § 2. Right to Compel Labor on.

Validity of statutes. 74: 667.

Labor on highway is not a tax. 74: 667.

City or town must have legislative authority. 74: 667.

Validity of ordinances. 74: 667.

Persons physically unable to labor. 74: 667, 668.

Notice of time work is to be done. 74: 668.

Nonresident land owners. 74: 668.

Visitors temporarily sojourning in state. 74: 668.

Exemptions. 74: 669.

#### § 3. Acquisition by Use.

Definition of highway. 57: 744.

Use or long use by public. 57: 746.

Prescription. 57: 748.

Dedication. 57: 749.

— Acceptance. 57: 752.

— Proof of. 57: 756.

Permissive use or license. 57: 757.

Time of use as evidence of dedication. 57: 759.

Unoccupied lands. 57: 762.

Definite line, deviations. 57: 763.

Width of road. 57: 763.

Interruption of use. 57: 764.

Statutes. 57: 765.

Relocation. 57: 766.

#### § 4. Rights, Obligations and Remedies of Abutting Owners.

Ownership of fee to soil. 101: 103.

Transfer, merger and ouster. 101: 105.  
 Easement or right of way. 101: 105.  
 Width and alteration of traveled way. 101: 105.  
 Rights distinguished from that of others. 101: 107.  
 Right to use road for private purposes. 101: 107.  
 Right to maintain fence or gates. 101: 108.  
 Encroachments and obstructions. 101: 109.  
 Destruction of lateral support. 101: 111.  
 Nuisances, offensive conduct. 101: 111.  
 Deviation from road to avoid obstruction. 101: 111.  
 Soil and minerals. 101: 111.  
 Grass. 101: 112.  
 Shrubs and trees. 101: 112.  
 Use of water in highway. 101: 114.  
 Watercourses, drains and ditches. 101: 114, 115.  
 Use of soil, rock and timber to repair highway. 101: 115, 116.  
 Vacation or abandonment. 101: 117.  
 Remedies available to owner. 101: 117.  
 In trees and minerals. 20: 537.  
 Right to graze cattle. 20: 537, 538.  
 Rights of abutting owners in highway. 106: 237.  
 — As dependent on status of fee in road. 106: 238.

**§ 5. What are Additional Servitudes.**  
 Definition of servitude. 106: 239.  
 Bicycle paths. 106: 239.  
 Hydrants, water tanks and pumping plants. 106: 240.  
 Unauthorized use of easement. 106: 242.  
 Means of transportation—Suburban and interurban railways. 106: 248.  
 — Ordinary railways. 106: 253.  
 — Private railroads. 106: 257.  
 Change from original use to increased use—From road to city street. 107: 258.  
 — By railroads. 106: 259.  
 Telegraphs and telephone or electric light systems. 106: 260.  
 Underground servitudes. 106: 266.

## **§ 6. Loss by Abandonment.**

Extinguishment of highway or street by nonuser or adverse possession. 14: 278-282.  
 Vacation or abandonment. 101: 117.

## **§ 7. Purposes for Which Highways may not be Used.**

In general. 131: 532.  
 Objects tending to frighten horses. 131: 534.  
 Lawfulness of use on a public highway. of traction engines or similar vehicles propelled by steam. 131: 533-539.  
 Proper uses defined. 131: 532, 533.  
 Vehicles of unusual character. 131: 533.

## **§ 8. Frightening Animals.**

Liability for injury caused by frightening animals by noises caused by steam engine. 133: 862-871.

## **§ 9. Law of the Road.**

Duties of drivers and pedestrians. 48: 366.  
 Right to use any part of road. 48: 367.  
 Duty to keep to right or left side. 48: 368.  
 Statutes construed. 48: 368, 369.  
 Customs. 48: 370.  
 Care required to avoid collision. 48: 372.  
 Liability for negligence. 48: 372, 373.  
 Driving on wrong side as evidence of negligence. 48: 374.  
 Horsemen and pedestrians, light and heavy vehicles. 48: 376.  
 Overtaking vehicles. 48: 377.  
 Bicycles. 48: 377.  
 Fast driving, runaways and unattended teams. 48: 378.  
 Funeral processions and unusual machinery. 48: 380.

## **§ 10. Law of the Automobile.**

Existence of special laws. 108: 212, 213.  
 Right to use street or highway. 108: 213.  
 Negligence in use of highway. 108: 215.  
 Negligence of third person. 108: 216.  
 Defects in streets and liability of city. 108: 217.  
 Speed regulations. 108: 218.

Registration and license. 108: 218.  
Lien for repairs or storage. 108: 219.

### § 11. Rights of Pedestrians.

Rights of pedestrians as compared with those of vehicles or drivers thereof while both are attempting to pass along or upon a public highway. 9: 878-880.

### HINDERING CREDITORS.

By transfers of property to evade debts. See Fraudulent Conveyances.

### HIRING.

See Bailment; Master and Servant.

### HISTORIC LANDMARKS.

Appropriation and preservation of. See Eminent Domain, § 4.

### HISTORY.

Judicial notice of geographical facts. See Evidence, §§ 1, 3.

### HOGS.

See Animals.

### HOLDING OVER.

As unlawful detainer. See Forcible Entry and Detainer, § 3.  
By tenant after expiration of lease. See Landlord and Tenant, §§ 23, 24.

### HOLDUPS.

See Robbery, §§ 1-3.

### HOLOGRAPHIC WILLS.

Nature and essentials. See Wills, § 9.

### HOME.

See Domicile.

Killing in defense of. See Homicide, § 6.

### HOMESTEAD.

WHO IS THE HEAD OF A FAMILY, § 1.  
EXEMPTION OF PROCEEDS AND PRODUCE OF HOMESTEAD, § 2.  
LIABILITIES ENFORCEABLE AGAINST, § 3.  
JUDGMENT LIENS ON HOMESTEAD, § 4.  
VENDOR'S LIEN AGAINST, § 5.  
WHAT CONSTITUTES ALIENATION, § 6.  
DEED OR MORTGAGE BY ONE SPOUSE, § 7.  
— EFFECT, § 8.  
LEASE BY ONE SPOUSE, § 9.  
ABANDONMENT, § 10.  
Deed of homestead as color of title. See Adverse Possession, § 10.

Effect of setting apart probate homestead to widow. See Executors and Administrators, § 17.

Insurable interest of husband in wife's homestead. See Insurance, § 3.

Reformation of deed or mortgage of. See Reformation of Instruments, § 2.

### § 1. Who is the Head of a Family.

In general. 70: 107.

Single man. 70: 109.

Married woman. 70: 111.

Widow or single woman. 70: 111.

Effect of desertion and divorce. 70: 113.

Guardians. 70: 114.

Tenants. 70: 114.

Partnerships. 70: 114.

Children of deceased owner. 70: 115.

### § 2. Exemption of Proceeds and Produce of Homestead.

Common-law rule. 45: 237, 238.

Rule in equity. 45: 238.

Involuntary conversion of homestead into money. 45: 238.

Rents, crops and produce. 45: 239.

### § 3. Liabilities Enforceable Against.

Liens for improvements. 45: 383.

Antecedent debts. 45: 384.

Purchase money. 45: 385.

Assignment of lien. 45: 385.

Borrowed purchase money. 45: 386.

Taxes. 45: 387.

Fiduciary debts. 45: 387.

Liability for tort, penalty or fine. 45: 388.

Professional services of physician. 45: 389.

Alimony decree in favor of wife. 45: 389.

### § 4. Judgment Liens on Homestead.

Lien not divested by subsequent occupation. 34: 496.

On existing homestead. 34: 498.

Homestead not subject to lien. 34: 499.

Lien attaches on abandonment. 34: 501.

Lands purchased for homestead. 34: 502.

Cases holding homestead subject to lien. 34: 503.

Excess over homestead valuation subject to lien. 34: 505.

**§ 5. Vendor's Lien Against.**

In general. 86: 174.  
Mortgage for purchase price. 86: 176.  
Purchase price of part of tract. 86: 177.  
Assignment of purchase money debt. 86: 177.  
Money paid for land by third person. 86: 178.  
Money borrowed to pay purchase price. 86: 180.  
— Cases holding borrowed money a lien. 86: 180.  
— Cases holding borrowed money not a lien. 86: 181.  
Outstanding title or removal of encumbrance. 86: 186.

**§ 6. What Constitutes Alienation.**

Deed by one spouse only. 133: 337.  
Mortgage. 133: 338; 86: 176.  
Lease. 133: 338.  
License. 133: 339.

**§ 7. Deed or Mortgage by One Spouse.**

In general. 133: 337.  
Whether conveyance or mortgage of homestead with or without covenants of title executed by only one of the spouses may become operative on subsequent abandonment or upon the title becoming vested in the spouse who made the conveyance. 12: 683-686.

**§ 8. — Effect.**

Absolute deed—General rule. 95: 911; 133: 337.  
— Compliance with statute. 95: 913.  
Mortgages and trust deeds. 95: 914.  
— Equitable mortgage. 95: 915.  
— Under trust agreement. 95: 915.  
— Third person may take advantage. 95: 916.  
— Validity as to excess. 95: 916.  
Change or renewal of mortgage. 95: 916.  
— Husband alone extending statute of limitations. 95: 917.  
Surrender and assignment of instrument under which homestead is held—School certificates. 95: 918.  
— Lease or contract. 95: 918.  
— Assignment for benefit of creditors. 95: 919.

Dedication. 95: 919.  
Eminent domain. 95: 919.  
Descent. 95: 919.  
To what extent invalid. 95: 919.  
Validating conveyance by subsequent acts. 95: 920.  
— Abandonment. 95: 920.  
Estoppel. 95: 921.  
— Effects of covenants in conveyance. 95: 922.  
Excess above homestead. 95: 922.  
Conveyance by one spouse to the other. 95: 923.  
— To wife and children. 95: 926.  
— Rule in Illinois and Texas. 95: 926.  
Leases—In general. 95: 926.  
— Estoppel in. 95: 927.  
— Covenants in. 95: 927.  
Rights of way. 95: 928.  
Contracts to convey—Same as deed. 95: 928.  
— When homestead character is lost. 95: 929.  
— Wife's refusal to join, as defense. 95: 929.  
— Defective conveyance as. 95: 929.  
Conveyance of reversion. 95: 930.  
Exceptions to the rule—Purchase money mortgage. 95: 931.  
— Prior equities and encumbrances. 95: 931.  
Voluntary consent of wife. 95: 932.  
— Written. 95: 932.  
— How manifested. 95: 933.  
— Fraud and misrepresentation. 95: 933.  
— Mistake or ignorance. 95: 934.  
— Mere relinquishment of dower. 95: 934.  
— Necessity for joint assent. 95: 935.  
— Effect of separation of husband and wife. 95: 936.  
— Effect of insanity of one spouse. 95: 937.  
— Power of attorney. 95: 938.  
— Ratification. 95: 938.  
— Necessity for consideration. 95: 939.  
Constitutionality of statutes restricting alienation of homesteads. 95: 939.  
Acknowledgment—Importance of statutory requirements. 95: 939.  
— Strict compliance with statute necessary. 95: 940.  
— Relinquishment of dower insufficient. 95: 941.

- Private examination of wife. 95: 941.
- Disqualification of officer. 95: 942.
- New acknowledgment. 95: 942.
- Impeaching officer's certificate. 95: 943.
- Estoppel as to and by. 95: 944.

### § 9. Lease by One Spouse.

- General policy of the law. 133: 336.
- What leases are valid. 133: 339.
- Separation. 133: 340.
- Insanity. 133: 340.
- Covenant for quiet enjoyment. 133: 340.

### § 10. Abandonment.

- Necessity for actual relinquishment. 102: 391.
- Necessity for intent to abandon. 102: 392.
- Time when intent must be formed. 102: 392.
- Statutory requirements. 102: 393.
- Who may abandon. 102: 393.
- Acts indicating intent to abandon—  
Deeds and contracts. 102: 394.
- Leases. 102: 396–398.
- Change in character or use of property. 102: 398.
- Acquisition of new homestead. 102: 399.
- Length of time of absence. 102: 411.
- Removal from property—In general. 102: 400.
- Business reasons. 102: 401.
- Election or appointment to office. 102: 403.
- Ill-health or old age. 102: 404.
- Better care and education of children. 102: 405.
- With contingent intent to return. 102: 405.
- Offering to sell property after removal. 102: 407.
- Registering or voting at new domicile. 102: 408.
- Removal to another state. 102: 410.
- Effect of duration of absence. 102: 411.

## HOMICIDE.

MURDER, § 1.  
 MANSLAUGHTER, § 2.  
 MENTAL ATTITUDE REDUCING HOMICIDE TO MANSLAUGHTER, § 3.  
 LIABILITY OF CORPORATION, § 4.  
 LAW OF SELF-DEFENSE, § 6.

## DEFENSES, § 5.

RIGHT TO SELF-DEFENSE OF PERSON  
 PROVOKING QUARREL OR VOLUNTARILY ENGAGING IN COMBAT,  
 § 7.

KILLING WIFE OR PARAMOUR IN  
 ADULTERY, § 8.

TO PREVENT ADULTERY, § 9.

INVOLUNTARY KILLING IN DOING AN  
 UNLAWFUL ACT, § 10.

NEGLIGENT HOMICIDE, § 11.

INDICTMENT FOR MURDER, § 12.

EVIDENCE, § 13.

CORONER'S INQUEST AS EVIDENCE, § 14.

CHARACTER AND REPUTATION OF DECEASED—ADMISSIBILITY, § 15.

— LAYING FOUNDATION FOR EVIDENCE OF, § 16.

— MANNER OF PROVING, § 17.

THREATS, § 18.

THREATS BY ACCUSED, § 19.

THREATS BY DECEASED, § 20.

UNCOMMUNICATED THREATS BY DECEASED, § 21.

DECLARATIONS ADMISSIBLE AS DYING  
 DECLARATIONS, § 22.

Liability of liquor seller for homicide committed by drunkard. See Intoxicating Liquors, § 2.

Killing trespassers. See Trespass, § 3.

### § 1. Murder.

Murder defined. 134: 727.

Murder and manslaughter distinguished. 134: 727, 728.

What constitutes murder in first degree. 102: 1028.

### § 2. Manslaughter.

Defined. 134: 727.

Degrees of manslaughter. 134: 728.

### § 3. Mental Attitude Reducing Homicide to Manslaughter.

Definitions. 134: 727.

Distinctions. 134: 727.

Classifications. 134: 728.

Absence of malice. 134: 728.

Blood-hot passion. 134: 730.

Provocation. 134: 732.

Time for cooling. 134: 733.

### § 4. Liability of Corporation.

Corporation cannot be prosecuted for. 133: 778.

### § 5. Defenses.

General nature of self-defense. 109: 805.

Coercion as defense. 106: 722.

Defense of wife's chastity. 132: 697.

### § 6. Law of Self-defense.

In general. 74: 717.

Necessity for reasonable belief of imminent danger. 74: 717.



Danger must appear urgent and pressing. 74: 722.

Grounds for believing danger imminent. 74: 724.

Duty to retreat. 74: 726.

Provoking difficulty. 74: 731.

Defense of others. 74: 735.

Defense of property. 74: 737.

Defense of habitation. 74: 740.

### § 7. Right to Self-defense of Person Provoking Quarrel or Voluntarily Engaging in Combat.

In general. 109: 805, 811.

Necessity for abandonment of combat. 109: 808.

Communicating intention to withdraw to opponent. 109: 810.

Effect of provocative words innocently spoken. 109: 812.

Where both combatants seek quarrel. 109: 812.

Where deceased went about armed. 109: 813.

Where defendant killed deceased on sight. 109: 813.

Hip-pocket movement of opponent. 109: 815.

Combat resulting from attempt to adjust business matters. 109: 816.

Combat resulting from demand for apology or explanation. 109: 817.

Combat resulting from passing the lie. 109: 818.

Ejecting person from one's premises. 109: 819.

Quarrel over card game. 109: 820.

Intervening to protect others. 109: 820.

Robber. 109: 822.

Husband or paramour on discovery of adultery. 109: 824.

Owner or trespasser. 109: 825.

### § 8. Killing Wife or Paramour in Adultery.

In general. 109: 824; 132: 695.

Manslaughter. 92: 214.

— Under statutes. 92: 216.

Murder. 92: 216.

Killing adulteress. 92: 218.

Evidence. 92: 218.

### § 9. To Prevent Adultery.

In flagrante delicto. 132: 695.

Past adultery. 132: 696.

The discovery. 132: 696.

### § 10. Involuntary Killing in Doing an Unlawful Act.

Involuntary manslaughter defined. 90: 571.

Negligence as unlawful act. 90: 572.

Act merely malum prohibitum. 90: 574.

Reckless driving. 90: 574.

Misdemeanors and felonies. 90: 575.

In the course of assaults and fights. 90: 576.

Duels. 90: 577.

Abandonment or exposure of child. 90: 578.

Burning building. 90: 578.

Procuring abortion. 90: 578.

Perpetrating burglary. 90: 579.

Perpetrating robbery. 90: 579.

Administering poison. 90: 580.

Perpetrating rape or sodomy. 90: 580.

Wrecking train. 90: 581.

Attempting suicide. 90: 581.

Negligent use of firearms. 90: 581.

— Pointing pistol or gun. 90: 581.

— Shooting to frighten. 90: 582.

— Killing third person. 90: 582.

— Shooting into crowd or house. 90: 583.

### § 11. Negligent Homicide.

General rules. 124: 323.

Degree of crime. 124: 324.

Failure of duty to dependents. 124: 329.

— Parent and child. 124: 325.

— Husband and wife. 124: 327.

Malpractice of medicine or surgery. 124: 330.

Negligent management of railroad trains. 124: 331.

Negligent navigation. 124: 335.

Miscellaneous cases. 124: 337.

### § 12. Indictment for Murder.

Certainty required. 3: 279.

Caption. 3: 279.

Charging part. 3: 280.

Conclusion. 3: 283.

Requisites under statutes of various states. 3: 281.

### § 13. Evidence.

Right of accused to testify as to his belief, intent and motive. 21: 318, 319.

### § 14. Coroner's Inquest as Evidence.

The verdict. 95: 766.

Minutes of proceedings. 95: 766.

Process verbal. 95: 767.

Evidence given by defendant—As witness. 95: 767.

— As accused. 95: 768.

Voluntary statements. 95: 769.

Evidence given by witnesses—Admissibility. 95: 771.

— Weight. 95: 772.

Use of evidence for impeachment. 95: 772.

Parol evidence. 95: 773.

### § 15. Character and Reputation of Deceased—Admissibility.

Where evidence leaves doubt as to whether deceased was the aggressor or as to reasonableness of belief under which accused claims to have acted. 124: 1019.

Origin and development of rule. 124: 1021.

Illustrative instances. 124: 1022.

Habit of going armed, threats and character and reputation assimilated. 124: 1022.

Disposition of deceased when under the influence of liquor or narcotics, or after gambling losses. 124: 1023-1025.

Character and reputation with respect to morality or honesty. 124: 1025.

Bad character or reputation. 124: 1026.

Time to which character evidence must relate. 124: 1026.

### § 16. — Laying Foundation for Evidence of.

Presumption favoring character and reputation. 124: 1027.

Necessity for proof of self-defense. 124: 1028.

Defendant's knowledge of character. 124: 1029.

Retreat by defendant. 124: 1030.

Either party may lay foundation. 124: 1030.

Manner of proving defendant's knowledge of decedent's character or reputation. 124: 1030.

### § 17. — Manner of Proving.

General reputation. 124: 1031.

Particular acts or instances incompetent. 124: 1032.

Opinion of witnesses. 124: 1033.

Habitual deportment toward certain persons. 124: 1033.

Reputation among certain classes of people. 124: 1033.

Defendant's personal observation. 124: 1033.

Particular wrongful acts. 124: 1034.

Record evidence of wrongful acts. 124: 1034.

Evidence brought out in rebuttal. 124: 1034.

### § 18. Threats.

Must refer to homicide. 89: 692.

Rebuttal of evidence of. 89: 710.

### § 19. Threats by Accused.

In general. 89: 692.

To show malice or intent. 89: 693.

Indefinite threats. 89: 694.

Remoteness of threats. 89: 695.

Against third person. 89: 696.

Against a class of persons. 89: 698.

By accomplice or conspirator. 89: 698.

### § 20. Threats by Deceased.

In general. 89: 699.

To show aggression or self-defense. 89: 700.

Necessity for showing overt act. 89: 701.

Remoteness. 89: 703.

General indefinite threats. 89: 703.

Communicated threats. 89: 704.

Uncommunicated threats. 89: 705.

Rebuttal of evidence of threats. 89: 710.

### § 21. Uncommunicated Threats by Deceased.

In general. 89: 705.

Accompanied by communicated threats. 89: 706.

Accompanied by hostile act. 89: 707.

Not accompanied by hostile act. 89: 708.

To show who was aggressor. 89: 709.

### § 22. Declarations Admissible as Dying Declarations.

Definition. 86: 638.

Grounds of admissibility. 86: 638.

Circumstances attending declarations. 86: 639.

Competency of declarant. 86: 640.

Form of declaration. 86: 642.

— Oral and written. 86: 642.

- Question and answer. 86: 644.
- Partial or distinct statements. 86: 646.
- Ratification of previous declarations. 86: 647.
- Character of declarations—Must be connected with killing. 86: 647.
- Showing facts not opinions. 86: 649.
- Showing intent or motive. 86: 652.
- Condition of person making—Actual danger. 86: 654.
- Sense of impending death. 86: 655.
- Need not state belief in death. 86: 658.
- Belief in imminence of death. 86: 660.
- Expectation of recovery. 86: 660.
- Belief and hopes of others. 86: 661.
- Time of making—Time when sense of impending death should appear. 86: 663.
- Time when declaration must be made. 86: 663.
- As part of res gestae. 86: 665.
- Admissible only in prosecutions for homicide or abortion resulting in death. 86: 665-668.

**HORSE-RACING.**

Betting at. See Gaming, §§ 4, 5.  
May be declared criminal. See Criminal Law, § 1.

**HORSES.**

See Animals.

**HOSPITALS.**

Acquisition of title to hospital by adverse possession. See Adverse Possession, § 1.  
As charitable uses. See Charities, § 1.  
Power of boards of health over. See Health, § 2.

**HOSTILE FIRE.**

What constitutes. See Insurance, § 10.

**HOSTILE WITNESS.**

Admissibility of evidence to show hostility or bias of witness. See Witnesses, § 14.

**HOTELS.**

See Innkeepers.

**HOUSE.**

See Domicile.

Subject to arson. See Arson, § 1.  
What constitutes. See Arson, § 2.  
Subject to burglary. See Burglary, § 1.

**HOUSE-BOTE.**

Estovers. See Landlord and Tenant, § 33.

**HUNTING GAME.**

Right to hunt on lands of another. See Game, § 1.

**HUSBAND AND WIFE.**

IN GENERAL, § 1.  
DOMICILE OF HUSBAND THAT OF WIFE—EXCEPTIONS TO THE RULE, § 2.  
RIGHT OF CREDITORS OF HUSBAND TO ATTACK MARRIAGE SETTLEMENTS, § 3.  
EFFECT OF MARRIAGE ON ANTENUPTIAL CONTRACTS, § 4.  
CONTRACTS BETWEEN—LAW GOVERNING, § 5.  
— TO COMPENSATE EACH OTHER FOR SERVICES OR RELINQUISH CLAIMS ON EARNINGS OR PROFITS, § 6.  
CONVEYANCES FROM HUSBAND TO WIFE, § 7.  
SAME, § 8.  
CONVEYANCE BY HUSBAND IN FRAUD OF WIFE, § 9.  
CONTRACTS OF WIFE—LAW GOVERNING, § 10.  
CONTRACT AND PROPERTY RIGHTS OF ABANDONED WIFE, § 11.  
POWERS OF ATTORNEY BY MARRIED WOMEN, § 12.  
SUFFICIENCY OF HUSBAND'S JOINDER IN WIFE'S DEED, § 13.  
AGENCY OF WIFE FOR HUSBAND, § 14.  
AUTHORITY OF WIFE TO PROCURE NECESSARIES, § 15.  
ESTOPPEL AGAINST MARRIED WOMEN, § 16.  
LAW GOVERNING PERSONAL PROPERTY RIGHTS OF WIFE, § 17.  
LAW GOVERNING REAL PROPERTY RIGHTS OF WIFE, § 18.  
LIABILITY OF HUSBAND FOR TORTS OF WIFE, § 19.  
LIABILITY OF WIFE FOR TORTS—STATUTORY, § 20.  
— COMMON LAW, § 21.  
LIABILITY OF WIFE FOR CRIMES COMMITTED IN HUSBAND'S PRESENCE, § 22.  
ACTIONS BETWEEN, § 23.  
LAW GOVERNING CAPACITY OF WIFE TO SUE OR BE SUED, § 24.  
VALIDITY OF JUDGMENT AGAINST A MARRIED WOMAN, § 25.  
WHAT IS COMMUNITY PROPERTY, § 26.  
LAW GOVERNING COMMUNITY PROPERTY RIGHTS OF WIFE, § 27.  
LAND GRANTED BY GOVERNMENT AS SEPARATE OR COMMUNITY PROPERTY, § 28.  
SEPARATION AGREEMENTS, § 29.  
WIFE'S RIGHT OF ACTION FOR SEPARATE MAINTENANCE, § 30.  
— LIEN FOR ALIMONY, § 31.  
ALIENATION OF HUSBAND'S AFFECTIONS, § 32.

See, also, Bigamy; Curtesy; Divorce; Dower; Homestead; Infants; Marriage; Parent and Child.

Authority of husband to accept something different from what might be legally demanded in satisfaction of obligation due wife. See Accord and Satisfaction, § 6.

Property rights of surviving spouse of adopted child. See Adoption, § 2.

Adverse possession by or against. See Adverse Possession, § 3.

Validity of statute affecting vested marital rights. See Constitutional Law, § 17.

Failure of husband to provide may be declared a crime. See Criminal Law, § 1.

Crime of wife coerced by husband. See Criminal Law, § 6.

Right of surviving spouse to custody and burial of deceased. See Dead Bodies, § 1.

Presumption of survivorship when both perish in common disaster. See Death, § 2.

Applicability of statute of frauds to marriage settlements. See Frauds, Statute of, § 8.

Conveyances between husband and wife in fraud of creditors. See Fraudulent Conveyances, § 7.

Marriage settlements in fraud of creditors. See Fraudulent Conveyances, § 7.

Deed or mortgage of homestead by one spouse only. See Homestead, §§ 7-8.

Homicide in defense of wife's chastity. See Homicide, § 5.

Homicide by neglect of wife. See Homicide, § 11.

Insurable interest of husband in wife's property. See Insurance, § 3.

Liability of saloon-keeper to wife of drunkard. See Intoxicating Liquors, § 2.

Personal unity of husband and wife. See Marriage, § 1.

Mechanic's lien on separate property of wife. See Mechanics' Liens, § 3.

Imputing negligence of one spouse to the other. See Negligence, § 14.

Partnership between. See Partnership, § 3.

Power of married women to be partners. See Partnership, § 4.

Construction of power of attorney executed by married woman. See Principal and Agent, § 11.

Wife's interest in husband's location on public land. See Public Lands, § 1.

Trust resulting from payment by one spouse for conveyance to another. See Trusts, § 7.

Abandonment of family as vagrancy. See Vagrancy, § 2.

Privileged communications between husband and wife which are protected from compulsory disclosure on the witness-stand. See Witnesses, § 8.

As witnesses for or against each other in criminal cases. See Witnesses, § 9.

### § 1. In General.

Fiction of personal unity abolished. 133: 607-609.

Status of wife at common law. 131: 130.

Nonsupport as vagrancy. 137: 950.

Right of either to purchase at forced sale of the property of the other. 136: 817.

### § 2. Domicile of Husband as That of Wife—Exceptions to the Rule.

After actual separation. 84: 27.

After agreements for separation. 84: 28.

After husband has given cause for divorce. 84: 28.

Forfeiture of right to benefit of husband's domicile. 84: 29.

Denial of wife's right to different domicile. 84: 30.

In divorce proceedings. 84: 30.

After divorce a mensa et thoro. 84: 32.

Right of wife to establish a separate domicile. 84: 30, 33.

### § 3. Right of Creditors of Husband to Attack Marriage Settlements.

Antenuptial settlements. 90: 509.

— Conveyance in consideration of marriage. 90: 509.

— Conveyance after marriage pursuant to prior agreement. 90: 510.

— Effect as to subsequent creditors. 90: 511.

Postnuptial settlements. 90: 511.

— In considerations of property acquired by marriage. 90: 513.

— In consideration of release of dower. 90: 513.

— Rights of subsequent creditors. 90: 514.

### § 4. Effect of Marriage on Antenuptial Contracts.

Common-law rule. 73: 898.

Effect of statutes. 73: 899.

### § 5. Contracts Between—Law Governing.

In general. 85: 574.

Marriage settlements—Construction. 85: 574.

— Effect of change of domicile. 85: 576.

### § 6. — To Compensate Each Other for Services or Relinquish Claims on Earnings or Profits.

Who may question such agreements. 58: 492, 494.

Consideration. 58: 492, 493.

Employment of husband to manage separate estate of wife. 58: 496.

Management of wife's business. 58: 497, 498.

Validity as between immediate parties. 58: 492.

Validity as to creditors. 58: 494-498.

### § 7. Conveyances from Husband to Wife.

Fiction of personal unity abolished. 133: 607.

Influence of equitable doctrines. 133: 609.

At law—Right denied. 133: 610.

— Right limited. 133: 611.

— Right absolute. 133: 612.

Conclusion from decisions. 133: 614.

### § 8. Same.

Common-law doctrine. 9: 323.

Statutory provisions. 9: 323, 324.

Direct conveyance. 9: 324, 325.

### § 9. Conveyance by Husband in Fraud of Wife.

Antenuptial conveyances generally. 103: 418.

Conveyance to children by a former marriage. 103: 419.

Conveyances affecting dower rights generally. 103: 421.

Conveyances to children as affecting dower rights. 103: 422.

Gifts by husband fraudulent as to wife. 24: 490-494.

### § 10. Contracts of Wife—Law Governing.

Law of the place of the contract. 46: 448.

Law of the place where the thing is situated. 46: 450.

Law of the forum. 46: 452.

Enforcement of wife's obligations. 46: 454-457.

Law of the place. 85: 566.

— Effect of domicile. 85: 568.

— Change of law. 85: 572.

Contracts binding separate estate. 85: 573.

Contracts with husband. 85: 574.

### § 11. Contract and Property Rights of Abandoned Wife.

General rule. 64: 862.

Wife of banished or exiled husband. 64: 863.

Where husband leaves the state or country. 64: 864.

Abandonment must be permanent. 64: 867.

Alien wife. 64: 869.

Power to make deed. 64: 869.

Insanity of husband. 64: 870.

Statutory provisions affecting. 64: 870.

### § 12. Powers of Attorney by Married Woman.

Authority to make. 84: 763.

— Deserted wife. 84: 765.

— To release dower. 84: 765.

— To convey homestead. 84: 771.

— To confess or transfer judgment. 84: 771.

Construction of power. 84: 765-769.

Mode of executing. 84: 769.

Revocation—By marriage. 84: 771.

— By war. 84: 771.

### § 13. Sufficiency of Husband's Joinder in Wife's Deed.

Omission to name husband as grantor. 97: 587.

— Deed sufficient if husband signs and acknowledges. 97: 584.

— Ineffective deed good as contract to convey. 97: 590.

Joinder of husband by separate instrument. 97: 591.

Effect of failure of husband to sign deed. 97: 591.

### § 14. Agency of Wife for Husband.

In general. 98: 628.

Presumption and burden of proof. 98: 629.

Absence of husband. 98: 630.

Infancy or lunacy of husband. 98: 632.

Prior conduct or course of business. 98: 632.

Ratification. 98: 632.

Married woman's statutes. 98: 633.

Particular transactions—Sales, exchanges and loans. 98: 634.

— Leases and rents. 98: 635.

— Bills and notes. 98: 635.

— Employment of labor. 98: 635.

— Employment of attorney. 98: 636.

### § 15. Authority of Wife to Procure Necessaries.

In general. 98: 639.

De facto wife. 98: 641.

What are necessaries. 98: 641.

Effect of adequate supply by husband. 98: 643.

Effect of wife's possession of personal means. 98: 644.

Notice not to sell to wife. 98: 644.

Borrowing money to buy necessities. 98: 645.

Effect of giving credit to wife personally. 98: 646.

Separation of husband and wife. 98: 646.

— Through fault of husband. 98: 647.

— Through fault of wife. 98: 648, 649.

Pending suit for divorce. 98: 650.

#### § 16. Estoppel Against Married Women.

By judgment. 57: 169.

By deed. 57: 170.

— Releasing dower. 57: 172.

By mortgage. 57: 172.

As against creditors of husband. 57: 175.

By acts of husband as agent. 57: 176.

By promissory note. 57: 177.

By representations, silence and conduct. 57: 178.

By void contracts. 57: 180.

Miscellaneous. 57: 181.

Estoppel to assert coverture. 57: 181.

#### § 17. Law Governing Personal Property Rights of Wife.

Law of the domicile. 85: 557.

Effect of change of domicile. 85: 559.

— Presumption as to foreign law. 85: 561.

Effect of separation. 85: 562.

Succession and distribution. 85: 562.

#### § 18. Law Governing Real Property Rights of Wife.

Law of the place. 85: 553.

Effect of change of law. 85: 556.

Descent and distribution. 85: 557.

#### § 19. Liability of Husband for Torts of Wife.

Under the common law—General rule. 92: 164.

— Reasons for the rule. 92: 165.

— Soundness of the doctrine. 92: 167.

— Coercion by husband. 92: 166.

Under married woman's statutes. 92: 169.

#### § 20. Liability of Wife for Torts—Statutory.

Repeal of common-law rule by implication. 131: 149.

Express repeal of common-law rule. 131: 157.

Torts arising from management and control of wife's separate estate. 131: 157.

Torts not connected with wife's separate estate. 131: 159.

Personal liability of wife for her tort. 2: 579, 580.

#### § 21. — Common Law.

In presence or absence of husband. 131: 132.

In conjunction with husband. 131: 134.

By husband or others as agent or servant. 131: 135.

Torts committed before marriage. 131: 137.

Distinction between simple torts and those arising from contractual relation. 131: 138.

Reasons for the rule. 131: 144.

Joinder of husband and wife as defendants. 131: 147.

Effect of death of husband or wife before judgment. 131: 147.

#### § 22. Liability of Wife for Crimes Committed in Husband's Presence.

In general. 33: 89.

Coercion of husband. 33: 91.

Coercion presumed from husband's presence. 33: 92.

— Not in case of high felonies. 33: 93.

— Not in case of keeping disorderly house. 33: 93.

Presumption of coercion rebuttable. 33: 93.

Wife acting independently is liable as feme sole. 33: 94.

Presence of husband need not be actual. 33: 95.

Effect of statutes. 33: 96.

#### § 23. Actions Between.

Common law. 73: 268.

— After dissolution of marriage. 73: 269.

In equity. 73: 271.

Statutory modification. 73: 274.

**Presumption that services of one for the other are gratuitous.** 133: 251.

**Limitation of actions between.** 136: 482, 483.

**§ 24. Law Governing Capacity of Wife to Sue or be Sued.**

**Law of the forum.** 85: 577.

**§ 25. Validity of Judgment Against a Married Woman.**

**Development of law of.** 134: 927.

**Common-law rule.** 134: 929-940.

**Confession or consent.** 134: 940.

**Default.** 134: 941.

**Statutes modifying common law.** 134: 942.

**§ 26. What is Community Property.**

**Theory and tests.** 126: 100.

**Intermingling with separate property.** 126: 101.

**Property acquired before marriage.** 126: 101.

**Property acquired after marriage.** 126: 102-108.

**Property acquired by gift, devise or descent.** 126: 110.

**Rents and profits of separate property.** 126: 112.

**Earnings of husband and wife.** 126: 115.

**Property acquired from the government.** 126: 116-118.

**Life insurance.** 126: 119.

**Damages for personal injuries.** 126: 119.

**Presumptions for or against.** 126: 120.

**§ 27. Law Governing Community Property Rights of Wife.**

**Effect of nonresidence.** 85: 564.

**Parties married outside of state.** 85: 565.

**Effect of removal to or from state where common law prevails.** 85: 565.

**Effect of marriage contract.** 85: 566.

**Effect of change of law.** 85: 566.

**§ 28. Land Granted by the Government as Separate or Community Property.**

**Spanish rule.** 96: 916.

**Whether title is onerous or lucrative—**  
**Texas rule.** 96: 916.

**— California rule.** 96: 917.

**Test for determining character.** 96: 918.

**Effect of subsequent death of wife.** 96: 919.

**Where property is acquired before marriage.** 96: 920.

**Effect of payment out of separate or community property.** 96: 921.

**Military land grants.** 96: 922.

**Rights of second wife.** 96: 922.

**Rights of reputed but not legal wife.** 96: 922.

**Government homesteads.** 96: 923.

**Timber and mining lands.** 96: 924.

**§ 29. Separation Agreements.**

**Validity of contract between husband and wife generally.** 83: 859.

**Public policy as affecting separation agreements.** 83: 860.

**Necessity for trustee.** 83: 861.

**Limitations upon rule upholding validity.** 83: 866.

**Validity of separate agreements.** 83: 867.

**Construction of agreements.** 83: 871.

**Effect of agreements.** 83: 872.

**Abrogation by reconciliation.** 83: 875.

**Release of dower.** 83: 877.

**Effect on rights of surviving spouse.** 83: 878.

**Actions upon.** 83: 881-885.

**§ 30. Wife's Right of Action for Separate Maintenance.**

**Right of action independent of suit for divorce.** 77: 228.

**Causes for which suit may be brought.** 77: 234.

**Statutory action.** 77: 239.

**After divorce.** 77: 240.

**Defenses.** 77: 242.

**Alimony pending suit.** 77: 244.

**§ 31. — Lien for Alimony.**

**Power of courts to create lien for alimony in suit for separation or separate maintenance.** 102: 710.

**§ 32. Alienation of Husband's Affections.**

**Right of action.** 46: 473, 474.

**Against parent.** 46: 477.

**Pleading.** 46: 474.

**Evidence.** 46: 475.

**Damages.** 46: 477.

**Instructions.** 46: 477.

Limitation of actions. 46: 478.

Arrest under New York code. 46: 478.

### ICE.

Right of riparian owners on navigable waters to ice. See Navigable Waters, § 3.

Cold storage. See Warehousemen, § 3.

Ownership of ice and right to travel upon, gather or harvest. See Waters and Watercourses, § 15.

### IDEAL LOCATION.

Classification of departures from ideal location of mineral vein. See Mines and Minerals, § 5.

### IDEM SONANS.

Doctrine stated and applied. See Names, § 2.

### IDENTIFICATION.

Of accused by compelling him to stand in court, covering or uncovering face or head, making footprints or making him write or repeat words. See Criminal Law, § 37.

Of persons talking over telephone preliminary to proof of conversation. See Evidence, § 10.

By photograph. See Evidence, § 22.

### IDENTITY OF OFFENSES.

As element of former jeopardy. See Criminal Law, § 18.

### IDIOTS.

See Insane Persons.

### IDLE PERSONS.

As vagrants. See Vagrancy, § 2.

### ILLEGAL CONSIDERATIONS.

Effect on accord and satisfaction. See Accord and Satisfaction, § 3.

For sale. See Sales, § 2.

### ILLEGAL CONTRACTS.

Rights of parties to. See Contracts, § 15.

### ILLEGAL PARTNERSHIP.

Accounting by. See Partnership, § 17.

### ILLEGAL TRUSTS.

See Monopolies, § 1.

### ILLEGITIMATE CHILDREN.

See Bastards.

### IMBECILES.

See Insane Persons.

### IMMINENCE OF DEATH.

Necessary to making of dying declarations. See Homicide, § 22.

### IMMINENT DANGER.

Duty of vessel to stop when danger is imminent. See Collision, § 1.

Reasonable belief of imminent danger as foundation of law of self-defense. See Homicide, § 6.

### IMMUNITY FROM SUIT.

Immunity of state from suit. See States, § 6.

Immunity of federal government from suit. See United States, § 1.

### IMPAIRING OBLIGATION OF CONTRACTS.

Effect making existing contracts illegal. See Constitutional Law, § 16.

### IMPEACHING WITNESS.

Power of court to limit number. See Witness, § 1.

Evidence admissible to impeach witness. See Witnesses, § 14.

### IMPEACHMENT.

Of award of arbitrators. See Arbitration and Award, § 3.

### IMPEDING FLOW.

Of streams or surface waters. See Waters and Watercourses, § 11.

### IMPERFECT WILL.

As nuncupative will. See Wills, § 10.

### IMPLEMENTS.

Exempt from execution. See Exemptions, § 7.

### IMPLIED ACCEPTANCE.

Of dedicated property. See Dedication, § 3.

### IMPLIED AUTHORITY.

Of attorney. See Attorney and Client, § 8.

Of auctioneers. See Auctions and Auctioneers, § 2.

### IMPLIED CONTRACTS.

Actions on. See Assumpsit.

### IMPLIED EASEMENTS.

See Easements, § 6.

### IMPLIED REPEAL.

Of statutes. See Statutes, § 8.

### IMPLIED REVOCATION.

Of will. See Wills, § 18.

Of will from change of circumstances of testator. See Wills, § 20.



**IMPLIED WARRANTY.**

Of quality of goods sold. See Sales, § 7.

**IMPORTING WILD GAME.**

Validity of statute prohibiting importation of game during closed season. See Game, § 1.

**IMPORTS.**

Place of taxation of imported goods. See Taxation, § 13.

**IMPOSITION.**

May be declared a crime. See Criminal Law, § 1.

**IMPOSSIBLE CONDITIONS.**

In wills. See Wills, § 42.

**IMPOSSIBILITY OF PERFORMANCE.**

Effect of impossibility of performance of contract. See Contracts, § 17.  
Of condition in deed. See Deeds, § 22.

**IMPOTENCY.**

As justification for breach of contract to marry. See Breach of Marriage Promise, § 2.  
Divorce for. See Divorce, § 5.

**IMPOUNDING ANIMALS.**

Estray laws. See Animals, § 4.  
Summary impounding and sale. See Animals, § 6.

**IMPOUNDING DEBRIS.**

Dam for impounding debris of mine. See Mines and Minerals, § 20.

**IMPRISONMENT FOR DEBT.**

Statutes violating prohibition against. See Arrest, § 3.

**IMPROVEMENTS.**

WHAT ARE BETTERMENTS AND WHEN ALLOWANCE IS MADE FOR THEM, § 1.

RIGHT TO IMPROVEMENTS MADE IN GOOD FAITH, § 2.

ON LAND HELD UNDER VOID CONTRACT, § 3.

Liability of homestead for. See Homestead, § 3.

§ 1. What are Betterments and When Allowance is Made for Them.

Definitions. 81: 164.

Betterment statutes. 81: 168.

Setoff of improvements in ejectment and trespass to try title. 81: 176.

Rule in estimating damages. 81: 178.

On estates or decedents. 81: 179.

On property fraudulently conveyed. 81: 179.

On land sold by guardian. 81: 180.

On homesteads. 81: 180.

On property sold at judicial sale. 81: 180.

On leased property. 81: 181.

On property held under license. 81: 182.

On property held by life tenant. 81: 182.

On mortgaged property. 81: 183.

On property of cotenants—Partition. 81: 185.

On public lands. 81: 188.

On property held in trust. 81: 189.

On property sold for taxes. 81: 190.

On property sold at private sale. 81: 190.

On property of husband and wife. 81: 192.

**§ 2. Right to Improvements Made in Good Faith.**

In general. 14: 53.

Evidence in actions involving. 14: 53.

**§ 3. On Land Held Under Void Contract.**

Right to recover value of improvements put upon land held under a contract void under the statute of frauds. 6: 495-497.

**IMPURE WATER.**

Liability of water company furnishing. See Waters and Watercourses, § 13.

**IMPUTATIONS.**

Words libelous per se. See Libel and Slander, § 2.

**IMPUTED NEGLIGENCE.**

See Negligence, § 14.

**IMPUTED NOTICE.**

Notice to attorney imputed to client. See Attorney and Client, § 10.

Notice to agent imputed to principal. See Principal and Agent, § 9.

**INCEST.**

Invalidity of incestuous marriages. See Marriage, § 4.

§ 1. Nature and Elements of Offense.

Nature of offense. 111: 20.

Illegitimate relatives. 111: 21.

Legitimate relatives. 111: 21.  
 Affinity. 111: 22.  
 Knowledge of relationship. 111: 23.  
 Proof of relationship. 111: 23.  
 Sexual intercourse. 111: 23.  
 Consent. 111: 24.

## § 2. Prosecution.

Defenses. 111: 25.  
 Accomplices and corroboration. 111: 26.  
 Indictment. 111: 27.  
 Admissibility of evidence. 111: 29.

## INCOMPATIBILITY.

Divorce for. See Divorce, § 1.

## INCOMPATIBLE OFFICES.

See Officers, § 8.

## INCONSISTENT REMEDIES.

Election between. See Election of Remedies, § 4.

## INCORRIGIBLE CHILDREN.

As vagrants. See Vagrancy, § 2.

## INCREASED INTEREST.

After default. See Interest, § 1.

## INCREASE OF RISK.

Avoiding insurance policy. See Insurance, § 25.

## INCREMENTS.

To property. See Accession.

## INCRIMINATING EVIDENCE.

Compelling accused to submit to physical examination, stand in court, write or repeat words. See Criminal Law, § 37.

## INCRIMINATING TESTIMONY.

Privilege of accused to refuse to perform acts, exhibit himself, submit to physical examination or give incriminating evidence against himself. See Witnesses, §§ 12, 13.

## INDEBTEDNESS.

What constitutes indebtedness of cities prohibited by law. See Municipal Corporations, § 13.

## INDEMNITY.

Stipulation in promissory note for attorneys fees as contract of indemnity. See Bills and Notes, § 2.  
 Application of statute of frauds to contracts to indemnify. See Frauds, Statute of, § 2.

Fidelity insurance. See Insurance, §§ 47-53.  
 Conclusiveness of judgment against principals and indemnitors. See Judgment, § 37.

Indemnity bonds in actions on lost instruments. See Lost Instruments, § 1.

To officers levying writs. See Sheriffs and Constables, §§ 2, 3.

## § 1. Necessity That Contract be in Writing.

In general. 42: 186.

English rule. 42: 188.

Bail. 42: 191.

Costs and expense of suit, damages and loss of services. 42: 191.

Against liability on indorsing or signing notes. 42: 191.

Against liability as surety. 42: 192.

Illustrations. 42: 193, 194.

Consideration. 42: 194.

## INDENTURES.

See Deeds; Mortgages.

## INDEPENDENT CONTRACTORS.

Who are and liability of master for negligence of. See Master and Servant, § 34.

## INDEX.

To public records. See Records, § 2.

## INDICTMENTS.

For burglary. See Burglary, § 5.

For conspiracy. See Conspiracy, § 4.

Proceedings by information as due process of law. See Constitutional Law, § 23.

For fornication. See Fornication, § 3.

Discharge of prisoner for defects in. See Habeas Corpus, §§ 2, 5.

For murder. See Homicide, § 12.

For kidnaping. See Kidnaping, § 1.

For larceny. See Larceny, § 8.

For malicious mischief. See Malicious Mischief, § 2.

For mayhem. See Mayhem, § 1.

For perjury. See Perjury, § 1.

For vagrancy. See Vagrancy, §§ 3, 5.

## INDIVIDUAL LIABILITY.

Of stockholder for corporate debts. See Corporations, § 33.

## INDORSEMENT.

Recovery of payment of bank check procured through forged indorsement. See Banks and Banking, § 11.

Of commercial paper. See Bills and Notes, §§ 8, 16.

On deeds. See Deeds, § 3.

## INDUCEMENT.

For confession of accused. See Criminal Law, § 29.

**INDUCING BREACH OF CONTRACT.**

Liability of person inducing servant to break contract. See Master and Servant, § 1.

**INFANTS.**

CONTRACTS, § 1.

CONTRACTS FOR NECESSARIES, § 2.

RATIFICATION OF CONTRACTS, § 3.

DISAFFIRMANCE OF CONTRACTS, § 4.

SERVICES, § 5.

GUARDIAN AD LITEM OR NEXT

FRIEND, § 6.

LIABILITY FOR ATTORNEY'S FEES, § 7.

EQUITY JURISDICTION TO DECREE

SALE OF INFANT'S LANDS, § 8.

EMANCIPATION, § 9.

UNBORN CHILDREN, § 10.

See, also, Parent and Child.

Jurisdiction over children in custody of non-resident. See Absentees, § 1.

Effect of judgment against unknown infant owners. See Absentees, § 2.

Authority of guardian ad litem to satisfy debt by accepting something other than what might be legally demanded. See Accord and Satisfaction, § 6.

Subject to adoption. See Adoption, § 1.

Right of guardian ad litem to appeal. See Appeal and Error, § 2.

Illegitimate children. See Bastards.

Infancy as defense in suit for breach of contract to marry. See Breach of Marriage Promise, § 1.

Exchange of personality by. See Exchange of Property, § 1.

Guardianship of. See Guardian and Ward.

Right to homestead. See Homestead, § 1.

Sale of liquor to. See Intoxicating Liquors, § 3.

Vacating judgment against. See Judgment, § 16.

Judgments against unborn children. See Judgment, § 35.

Conclusiveness of judgments against infants. See Judgments, § 38.

Validity of marriage by. See Marriage, § 4.

Negligent injury to. See Negligence, § 6.

Contributory negligence of. See Negligence, § 12.

Negligence imputed to. See Negligence, § 14.

Duty to support parent. See Parent and Child.

Place of taxation of property of. See Taxation, § 13.

Provisions in wills for after-born child. See Wills, § 34.

Competency to testify in civil or criminal cases. See Witnesses, § 4.

**§ 1. Contracts.**

Capacity to contract. 18: 573.

Void and voidable contracts. 18: 574.

Statutory regulations. 18: 579, 638.

Deeds. 18: 582.

— Of married women under age. 18: 584.

Executory contract to sell land. 18: 586.

Mortgages of real property. 18: 587.

Leases—Liability for rent. 18: 589.

Mechanics' liens. 18: 592.

Marriage settlements. 18: 593.

Sale, exchange or assignment of person-  
alty. 18: 595.

— Warranties. 18: 596.

Chattel mortgages. 18: 596.

Assignments for benefit of creditors.  
18: 597.

Purchases of real property. 18: 597.

Trading contracts. 18: 598.

— Bankruptcy of infant. 18: 598.

Partnership agreements. 18: 601.

Lending and borrowing money. 18:  
605.

Bills and notes. 18: 606.

Bonds. 18: 611.

Sealed contracts. 18: 612.

Interest. 18: 613.

Account stated. 18: 613.

Suretyship. 18: 614.

Shareholder in corporations. 18: 615.

Releases and compromises. 18: 618.

Arbitration. 18: 619.

Apprenticeship. 18: 626.

Contracts to marry. 18: 627.

Gifts. 18: 628.

Delegation of authority. 18: 629.

Concealment or misrepresentation as to  
age. 18: 633.

Emancipation. 18: 637.

Marriage. 18: 638.

Contracts entered into pursuant to stat-  
utes. 18: 638.

Enlistment. 18: 639.

Act which infant would have been com-  
pelled by law to do. 18: 641.

Liability for wife's antenuptial debts.  
18: 643.

Necessaries—General rule. 18: 643.

Who may take advantage of infancy.  
18: 695.

Ratification. 18: 699.

Torts connected with contracts. 18:  
720.

**§ 2. Contracts for Necessaries.**

Express contracts. 18: 643.

Implied contracts. 18: 646.

Must be procured by and charged to  
infant. 18: 647.

Where infant is already supplied. 18:  
647.

Test to determine what are. 18: 650.

Station and circumstances of infant.  
18: 650.

Articles for mere ornament or pleasure.  
18: 651.

Province of court and jury. 18: 652.

- Burden of proof. 18: 652.  
 Illustrations of what may be necessities. 18: 653.  
 ——— Necessaries for wife and family. 18: 658.  
 ——— Loans and advances for necessities. 18: 658.

### § 3. Ratification of Contracts.

- Contracts which may be ratified. 18: 699.  
 Nature and effect of ratification. 18: 700.  
 Suit should be brought on the contract ratified. 18: 701.  
 After suit brought. 18: 702.  
 Of part of transaction. 18: 703.  
 Cannot be made before attaining majority. 18: 703.  
 Who may ratify. 18: 703.  
 Must be voluntary. 18: 705.  
 Must have been made with knowledge of nonliability. 18: 705.  
 Manner of making. 18: 706.  
 Necessity for writing. 18: 706.  
 Of executory contracts by acknowledgment or new promise. 18: 709.  
 Deeds, leases and mortgages. 18: 713.  
 Sales of personal property. 18: 713.  
 By bringing suit. 18: 715.  
 By accepting consideration. 18: 715.  
 By retention of property purchased. 18: 715.  
 By failure to disaffirm within reasonable time. 18: 718.  
 By sale of property purchased. 18: 718.  
 Miscellaneous acts constituting ratification. 18: 719.

### § 4. Disaffirmance of Contracts.

- In general. 18: 659.  
 Of part of transaction. 18: 659.  
 As against subsequent bona fide purchasers. 18: 661.  
 Of previous deed where subsequent grantee has notice. 18: 662.  
 Must be indicated by some positive act. 18: 662.  
 Degree of solemnity required. 18: 663.  
 Particular acts amounting to. 18: 664.  
 ——— Re-entry after conveyance. 18: 664.  
 ——— Notice of disaffirmance 18: 664.  
 ——— Sale of personalty previously mortgaged. 18: 664.

- Execution of second deed, mortgage or lease. 18: 665.  
 ——— Suit in ejectment. 18: 667.  
 ——— Plea of infancy. 18: 668.  
 Personal contracts and contracts concerning personalty. 18: 668.  
 Deeds, leases and mortgages. 18: 670.  
 Within reasonable time after majority. 18: 671.  
 ——— Deeds. 18: 675.  
 ——— Deeds of married women. 18: 678.  
 Consequences of disaffirmance. 18: 681.  
 ——— Right to recover consideration paid. 18: 683.  
 ——— Right of adult to recover consideration from infant. 18: 686.  
 ——— Infant's obligation to restore consideration. 18: 687.  
 Avoidance of disaffirmance. 18: 694.

### § 5. Services.

- Presumption that services rendered to relative are gratuitous. 133: 251.

### § 6. Guardian Ad Litem or Next Friend.

- Power to sue. 97: 995.  
 Power restricted to appointment. 97: 996.  
 Commencement and termination of power. 97: 996.  
 Acts binding on infant. 97: 996.  
 Duty to make vigorous defense. 97: 996.  
 ——— Admissions against infant unauthorized. 97: 997.  
 ——— Assent to acts prejudicial to infant. 97: 998.  
 Compromise and settlement. 97: 997.  
 Arbitration of claim. 97: 1000.  
 Receipt of funds and satisfaction of judgment. 97: 1001.  
 Contracts for legal services. 97: 1002.  
 Purchase at sale of infant's property. 97: 1003.  
 Waiver of service of process. 97: 1003.  
 Appeal. 97: 1004.  
 Verification for infant. 97: 1004.  
 Duty to use good faith. 97: 1004.  
 Miscellaneous rights and duties. 97: 1005.

### § 7. Liability for Attorney's Fees.

- As necessities. 96: 731.  
 In civil cases. 96: 733.  
 In criminal cases. 96: 734.

**§ 8. Equity Jurisdiction to Decree Sale of Infant's Lands.**

English rule. 120: 655.  
American adoption of English rule. 120: 655, 656.  
Equitable estates. 120: 659.

**§ 9. Emancipation.**

What is and how established. 113: 113; 18: 637.  
Acts constituting. 113: 114–117.  
Marriage. 113: 118.  
Insolvency of parent. 113: 119.  
Enlistment in army or navy. 113: 119.  
Attaining majority. 113: 120.  
Effect of emancipation. 113: 120.  
Effect of emancipation on right to recover for services rendered to parent. 133: 256.

**§ 10. Unborn Children.**

Restricted use of term herein. 119: 947.  
Rule that child, from date of conception, acquires property and rights of action as if living. 119: 948.  
Exceptions to the rule—It must not operate to the prejudice of the child. 119: 948.  
— It must not benefit third persons. 119: 948.  
— Not entitled to rents and profits accruing between conception and birth. 119: 949.  
Application of rule—Descent. 119: 949.  
— Devise or bequest. 119: 950.  
— Illegitimates. 119: 950.  
— Gifts. 119: 951.  
— Marriage articles. 119: 951.  
— Conveyances. 119: 951.  
— Statutory rights. 119: 952.  
— Actions for injuries before birth. 119: 953.  
— Judicial proceedings in which the child if born would be a necessary party. 119: 953–956.

**INFANT WITNESSES.**

Competency of. See Witnesses, § 4.

**INFECTIOUS DISEASE.**

See Contagious Disease.

**INFIRM PERSONS.**

Right of carrier to refuse to carry. See Carriers, § 40.

**INFORMATION AND BELIEF.**

Denials on information and belief. See Pleading, § 1.

**INFORMERS.**

Right to recover penalty. See Penalties, § 1.

**INFRINGEMENT.**

Of patent. See Patents, § 3.

**IN FULL TO DATE.**

Acceptance of money or check in full satisfaction of debt. See Accord and Satisfaction, § 1.  
Effect of acceptance of check as payment in full. See Payment, § 2.

**INHERITANCE.**

See Descent.

By or from adopted children or their children. See Adoption, §§ 1, 2, 4, 5.

**INHERITANCE TAXES.**

See Taxation, §§ 21–27.

**INITIAL CARRIER.**

Liability for negligence of connecting carrier. See Carriers, § 46.

**INITIALS.**

Proceedings against persons by their initials or by less or other than their full names. See Names, § 3.

**INJUNCTION.**

IN GENERAL, § 1.  
IRREPARABLE INJURY, § 2.  
AGAINST ENFORCEMENT OF VOID ORDINANCE, § 3.  
AGAINST TRESPASS, § 4.  
AGAINST ACTIONS IN ANOTHER STATE OR COUNTRY, § 5.  
AGAINST CRIMES AND CRIMINAL PROCEDURE, § 6.  
TO PREVENT BREACH OF CONTRACT, § 7.  
TO PREVENT MULTIPLICITY OF SUITS, § 8.  
Enjoining excavations removing lateral support. See Adjoining Land Owners, § 1.  
Enjoining blasting on adjoining lands. See Adjoining Land Owners, § 3.  
Right of members of association to injunction. See Association, § 3.  
Right of members of mutual aid societies to the remedy. See Beneficial Associations, § 7.  
To enforce right of privacy. See Constitutional Law, § 14.  
Against execution sale. See Execution, § 8.  
Against proceedings in another state to evade exemption laws. See Exemption, § 1.  
Mandamus to compel issue or dissolution of. See Mandamus, § 6.

Against deposit of debris by mine owner. See Mines and Minerals, § 20.  
 Against impairment of mortgagee's security. See Mortgages, § 15.  
 Against obstruction of navigation. See Navigable Waters, § 11.  
 Against private nuisance. See Nuisance, § 2.  
 To try title to office. See Officers, § 12.  
 To prevent water company from shutting off water. See Waters and Watercourses, § 13.

### § 1. In General.

Prohibiting disclosure of trade secret. 133: 768.

### § 2. Irreparable Injury.

What constitutes. 1: 374.  
 Injury that cannot be compensated in damages. 1: 375.  
 Injury not subject to pecuniary measurement. 1: 375.  
 Injury tending to destroy estate. 1: 376.  
 Removing mineral from mines. 1: 376.  
 Cutting timber, fruit and ornamental trees. 1: 377.  
 Illustrations. 1: 377.  
 Pleading. 1: 378.

### § 3. Against Enforcement of Void Ordinance.

General principles. 118: 372.  
 Criminal prosecutions. 118: 374.  
 Multiplicity of suits. 118: 375.  
 Irreparable injury. 118: 376.  
 Interference with contract or vested rights. 118: 377.

### § 4. Against Trespass.

Equity jurisdiction over trespass. 99: 732.  
 Circumstances affecting—Nature of injury. 99: 735.  
 — Repeated or continuous injuries. 99: 736.  
 — Injury or inconvenience to trespasser. 99: 740.  
 — Legal disability of plaintiff. 99: 741.  
 — Insolvency or nonresidence of trespasser. 99: 741.  
 — Inadequacy of legal remedy. 99: 742.  
 Making excavations. 99: 743.  
 Laying out streets or highways. 99: 744.  
 Erecting structures. 99: 744.  
 Removal of structures and property. 99: 745.  
 Interference of fences and gates. 99: 745.

Removal of earth and rock. 99: 747.  
 Removal of mineral, oil and gas. 99: 747.

Cutting and removing timber. 99: 748.  
 Working trees for turpentine. 99: 750.  
 Injuring or removing crops. 99: 750.  
 Grazing and roaming cattle. 99: 751.  
 Hunting, fishing and boating. 99: 751.  
 Interference with church or cemetery. 99: 752.

Miscellaneous trespasses. 99: 752.

### § 5. Against Actions in Another State or Country.

In general. 59: 879.  
 After appointment of receiver. 59: 881.  
 Actions to avoid effect of previous suits. 59: 882.  
 Suits to avoid agreements. 59: 883.  
 Suits to evade exemption laws. 59: 883.  
 Suits to obtain relief not warranted by laws of domicile. 59: 884.  
 Actions barred by statute of limitations. 59: 885.

### § 6. Against Crimes and Criminal Procedure.

General rule. 35: 670.  
 Modifications of general rule. 35: 671.  
 Crimes directly affecting property rights. 35: 673.  
 Purprestures and nuisances. 35: 673.  
 Unlawful exercise of corporate privileges. 35: 675.  
 Defamatory publications. 35: 675.  
 Enforcement of penal laws and ordinances. 35: 677.  
 Criminal proceedings by parties to suits pending in courts of equity. 35: 680.

### § 7. To Prevent Breach of Contract.

General principles. 90: 634.  
 Exclusive privileges. 90: 636.  
 Contracts in restraint of trade. 90: 637.  
 Breach of covenant. 90: 640.  
 — Building restrictions. 90: 641.  
 Covenant in lease. 90: 643.  
 Stipulation for damages. 90: 645.  
 Both parties in fault. 90: 646.  
 Contracts for personal services. 90: 646.  
 Violation by employer. 90: 651.  
 Mutuality. 90: 651.

**§ 8. To Prevent Multiplicity of Suits.**

Review of former notes. 131: 30.

Introduction. 131: 31.

Pomeroy's doctrine. 131: 32.

Where community of interest in the questions of law and fact involved is held sufficient to justify relief by injunction. 131: 33.

**INJURED PARTIES.**

Entitled to appeal. See *Appeal and Error*, § 2.

**INNKEEPERS.**

WHO ARE GUESTS, § 1.

LIABILITY FOR FAILURE TO PROVIDE FIRE-ESCAPES, § 2.

INJURIES TO GUESTS FROM THIRD PERSONS, § 3.

LIABILITY FOR INJURY OR LOSS OF PROPERTY, § 4.

LIEN, § 5.

License on occupation. See *Licenses*, § 1.

Mechanic's lien for board furnished workmen.

See *Mechanics' Liens*, § 1.

Theft by guest as burglary. See *Burglary*, § 1.

**§ 1. Who are Guests.**

In general. 105: 932.

Travelers. 105: 934.

Persons leaving animals or property at inn. 105: 935.

Status as guest or boarder. 105: 937.

— Duration of stay. 105: 937.

— Agreement as to price of board. 105: 939.

When relation of guest ceases. 105: 939.

**§ 2. Liability for Failure to Provide Fire-escapes.**

Duty of owner of building. 119: 792, 793.

Duty of lessee of building conducting a hotel. 119: 792.

Statutes and ordinances construed. 119: 792.

**§ 3. Injuries to Guests from Third Persons.**

Innkeeper not insurer of safety of guest. 6: 736.

Duty to guard guest from injury. 6: 737.

**§ 4. Liability for Injury or Loss of Property.**

Liability as insurer. 99: 578.

Liability for negligence. 99: 580.

*Index-Digest*—13

Circumstances of loss. 99: 580.

Goods subject to deterioration. 99: 581.

Loss from fire. 99: 582.

Relation of guest must exist. 99: 583.

Boarder and guest distinguished. 99: 583.

When liability attaches. 99: 584.

When liability terminates. 99: 586.

Goods left after departure of guest. 99: 587.

— Intention to return. 99: 588.

— Character of property. 99: 588.

Goods for which liable. 99: 589.

— Money. 99: 590.

— Salesman's samples. 99: 590.

Rules of hotel. 99: 591.

Limitation of liability by statute. 99: 591.

— Construction of statute. 99: 592—594.

Contributory negligence. 99: 595.

— Failure to lock door. 99: 597.

— Intoxication. 99: 598.

Lack of license. 99: 598.

Illegal occupation of guest. 99: 598.

Control of goods. 99: 599.

Want of authority of servant. 99: 600.

Remedies of guest. 99: 600.

Measure of damages. 99: 600.

Liability to boarders. 99: 600.

Liability to restaurant-keepers. 99: 601.

**§ 5. Lien.**

Existence in general. 107: 869.

Waiver or loss of lien. 107: 869.

Against whom lien exists. 107: 870.

Enforcement of lien. 107: 871.

Boarding-house keepers. 107: 872.

Lodging-house keepers. 107: 874.

Enforcement of lien. 107: 874.

Property subject to lien—Exempt property. 107: 874.

— Wages and stolen property. 107: 875.

— Mail-coach horses. 107: 876.

— Property of third person. 107: 876.

Right to detain guest. 107: 876.

**INNOCENCE.**

Gives no right to resist arrest. See *Arrest*, § 2.

**INNUENDO.**

Evidence admissible to support. See *Libel and Slander*, § 24.

**IN PAIS.**

Estoppel in pais. See Estoppel.

**IN PERSONAM.**

Proceedings against nonresidents. See Absentees, § 1.

Proceedings against unknown owners. See Absentees, § 2.

**IN REM.**

Proceedings against nonresidents. See Absentees, § 1.

Proceedings against unknown owners. See Absentees, § 2.

**INSANE DELUSIONS.**

As defense for crime. See Criminal Law, § 2.  
What are. See Insane Persons, § 1.

**INSANE PERSONS.**

INSANE DELUSIONS, § 1.

ADJUDICATION OF INSANITY AS SHOWING WANT OF CAPACITY, § 2.

GUARDIANSHIP AS SHOWING WANT OF CAPACITY, § 3.

CONTRACTS, DEEDS AND MORTGAGES, § 4.

CIVIL LIABILITY FOR TORT, § 5.

ACTIONS AGAINST, § 6.

DUE PROCESS AS APPLIED TO INSANE PERSONS, § 7.

JUDGMENTS FOR OR AGAINST, § 8.

Previous insanity as justification for breach of contract to marry. See Breach of Marriage Promise, § 2.

Right of carrier to refuse to carry. See Carriers, § 40.

Capacity to commit crime. See Criminal Law, § 8.

Contract and property rights of wife of insane man. See Husband and Wife, § 11.

Equitable relief against judgment of court having exclusive jurisdiction over estates of insane persons. See Judgment, § 23.

Testamentary incapacity of. See Wills, §§ 15-17.

Competency and credibility of insane persons as witnesses. See Witnesses, § 5.

**§ 1. Insane Delusions.**

Defined. 63: 81.

Prejudices and eccentricities. 63: 89.

Spiritualism and other beliefs. 63: 91.

Belief in ghosts, dreams, divining rods, philosopher's stone, etc. 63: 93.

Presumptions and burden of proof. 63: 106.

**§ 2. Adjudication of Insanity as Showing Want of Capacity.**

In general. 140: 347.

Presumptions and burden of proof. 140: 348.

— Testamentary capacity. 140: 348.

— Distinction between wills and contracts. 140: 349.

Admissibility of record and other evidence. 140: 350.

— Criminal cases. 140: 351.

— Testamentary capacity. 140: 352.

Conclusiveness of inquisition. 140: 353.

**§ 3. Guardianship as Showing Want of Capacity.**

In general. 140: 355.

Presumptions and burden of proof. 140: 356.

Admissibility of record and other evidence. 140: 357.

**§ 4. Contracts, Deeds and Mortgages.**

In general. 71: 425.

For necessities. 71: 427.

Made without notice of insanity. 71: 427.

Made during lucid intervals. 71: 429.

Chattel mortgages. 71: 430.

Deeds. 71: 430.

Mortgages. 71: 432.

**§ 5. Civil Liability for Tort.**

In general. 42: 753.

Libel or slander. 42: 754.

**§ 6. Actions Against.**

Capacity to sue or be sued. 130: 842.

How jurisdiction is obtained over. 130: 845.

**§ 7. Due Process as Applied to Insane Persons.**

In general. 43: 531.

Arrest on charge of insanity. 43: 532.

Notice. 43: 534.

Evidence, hearing and setting aside inquisition. 43: 537.

Jury trial of question of sanity. 43: 539.

Sufficiency and conclusiveness of adjudication. 43: 540.

Remedies for illegal commitment. 43: 540.

Confinement after acquittal for crime on the ground of insanity. 43: 540.

**§ 8. Judgments for or Against.**

Validity and effect. 130: 846.

Effect of knowledge of insanity. 130: 852.



Judgments or decrees in divorce or other special proceedings. 130: 853.  
 Relief from judgments for or against insane persons—By appeal or writ of error coram nobis. 130: 854.  
 — By proceedings in equity. 130: 856.

### INSANE WITNESS.

Competency and credibility. See Witnesses, § 5.

### INSANITY.

As defense for crime. See Criminal Law, § 8.  
 Undue influence and delusions avoiding wills. See Wills, §§ 15–17.

### INSCRIPTIONS.

On flags and banners as evidence of conspiracy. See Conspiracy, § 5.

### INSOLVENCY.

See, also, Assignments for Benefit of Creditors; Bankruptcy.  
 Right of assignee in insolvency to appeal. See Appeal and Error, § 2.  
 Of banks. See Banks and Banking, § 20.  
 Of building and loan association. See Building and Loan Associations, § 1.  
 Of corporations. See Corporations, §§ 56–58.  
 Proceedings to prevent insolvents from departing or removing their property from jurisdiction. See *Ne Exeat*, §§ 1–4.  
 Setoff after. See Setoff and Counterclaim, § 2.

#### § 1. Conveyances in Contravention of Insolvent Laws.

Preferences by insolvent. 32: 446.  
 Bona fide mortgage made in ignorance of insolvency. 32: 446.

#### § 2. Discharge of Insolvent.

Effect on debts due citizens of another state. 62: 232.

#### § 3. Effect of Discharge on Nonresident Creditor.

Discharge is void when rendered against a nonresident creditor who has not made himself a voluntary and consenting party to the proceedings. 15: 212.

Reasons for the rule making such discharge void. 15: 212–215.

Effect of acceptance, by such nonresident creditor, of the amount of dividend decreed. 15: 215–221.

### INSPECTION.

Of corporate books by stockholders. See Corporations, § 10.

Duty of master to inspect machinery and places of work. See Master and Servant, § 9.  
 Of public records. See Records, § 1.

### INSPECTION OF RECORDS.

Rights of abstracters to examine and copy public records. See Abstracts of Title, § 2; Corporations, § 10; Records, § 1.

### INSPECTORS.

As vice-principals. See Master and Servant, § 19.

### INSTALLMENT CONTRACTS.

Time as essence of installment contract to purchase land. See Vendor and Purchaser, § 2.

### INSTRUCTING SERVANT.

Duty of master. See Master and Servant, § 17.

### INSTRUCTIONS TO JURY.

In criminal cases. See Criminal Law, §§ 51–53.  
 Invading province of jury. See Trial, § 5.

### INSULATION.

Of electric wires. See Electricity, § 1.

### INSURABLE INTEREST.

See Insurance, §§ 2–4.

### INSURANCE.

KINDS OF INSURANCE, § 1.  
 INSURABLE INTEREST, § 2.  
 INSURABLE INTEREST OF HUSBAND IN WIFE'S PROPERTY, § 3.  
 LIFE INSURANCE IN FAVOR OF PERSON HAVING NO INTEREST, § 4.  
 POLICY OR CONTRACT, § 5.  
 WHEN CONTRACT IS COMPLETE, § 6.  
 WHAT CONSTITUTES DELIVERY OF POLICY, § 7.  
 NECESSITY AND PURPOSE OF DELIVERY, § 8.  
 CONDITIONAL DELIVERY, § 9.  
 CONSTRUCTION OF POLICY, § 10.  
 EARTHQUAKE CLAUSE IN FIRE POLICIES, § 11.  
 MORTGAGE CLAUSE IN FIRE POLICY, § 12.  
 ASSIGNMENT OF POLICY, § 13.  
 — FORMAL REQUISITES, § 14.  
 — WHO MAY ASSIGN, § 15.  
 — TO WHOM POLICY MAY BE ASSIGNED, § 16.  
 — VALIDITY OF ASSIGNMENT, § 17.  
 — EFFECT OF ASSIGNMENT, § 18.  
 APPLICATION, § 19.  
 — MISREPRESENTATION AS TO HEALTH, § 20.  
 — APPLICATIONS DRAWN BY AGENTS, § 21.  
 FORFEITURE OF POLICY—SUICIDE AS AVOIDING POLICY, § 22.  
 — DEATH IN KNOWN VIOLATION OF LAW, § 23.

— VOLUNTARY EXPOSURE TO DANGER, § 24.  
 — INCREASE OF HAZARD AVOIDING POLICY, § 25.  
 CONFLICT OF LAWS GOVERNING NON-FORFEITURE OF LIFE POLICY, § 26.  
 WHEN CAUSE OF FORFEITURE BINDS MORTGAGEE, § 27.  
 REVIVAL OF POLICY ON DISCONTINUANCE OF CAUSE OF FORFEITURE, § 28.  
 WAIVER OF FORFEITURE, § 29.  
 VALIDITY OF STIPULATION AGAINST WAIVER OF CONDITIONS AND FORFEITURES, § 30.  
 WAIVER OF STIPULATION THAT CONDITIONS AND FORFEITURES SHALL NOT BE WAIVED, § 31.  
 RISKS AND CAUSES OF LOSS COVERED BY FIRE POLICY, § 32.  
 SAME, § 33.  
 WHAT IS TOTAL LOSS OR DESTRUCTION IN INSURANCE OTHER THAN MARINE, § 34.  
 PROXIMATE AND REMOTE CAUSE OF LOSS, § 35.  
 CERTIFICATE OF LOSS, § 36.  
 PROOF OF DEATH, § 37.  
 PROOF OF CAUSE OF DEATH, § 38.  
 ADJUSTMENT OF LOSS, § 39.  
 RIGHT TO PROCEEDS—WHEN DESIGNATION OF BENEFICIARY IS INVALID OR INEFFECTIVE, § 40.  
 — EFFECT OF DEATH OF BENEFICIARY BEFORE INSURED, § 41.  
 — POLICY PAYABLE TO HEIRS, § 42.  
 APPLICATION OF PROCEEDS OF POLICY ON MORTGAGED PREMISES, § 43.  
 RIGHT OF INSURER TO SUBROGATION, § 44.  
 ACTION ON POLICY, § 45.  
 CONTRACT OF REINSURANCE AND REMEDIES OF PARTIES, § 46.  
 FIDELITY OR EMPLOYER'S LIABILITY INSURANCE—COMMENCEMENT AND DURATION OF LIABILITY, § 47.  
 — NATURE, CONSTRUCTION AND VALIDITY OF CONTRACT, § 48.  
 — WARRANTIES, REPRESENTATIONS AND CONCEALMENT, § 49.  
 — DUTIES OF AGENT OR EMPLOYEE, § 50.  
 — UNFAITHFUL AND DISHONEST CONDUCT OF EMPLOYEE, § 51.  
 — DILIGENCE OF INSURED, NOTICE AND PROOF OF LOSS OR DISHONESTY, § 52.  
 — RELEASE AND SUBROGATION, § 53.  
 Beneficial associations as insurance companies. See Beneficial Associations, § 1.  
 Mutual aid societies. See Beneficial Associations, § 2.  
 Deduction of life insurance from damages for injury resulting in death. See Death, § 5.  
 Combinations between insurance companies. See Monopolies, § 1.  
 As necessary of life within meaning of anti-trust laws. See Monopolies, § 1.  
 Fire insurance as security for mortgage. See Mortgages, § 1.

Reformation of insurance policies. See Reformation of Instruments, § 1.

## § 1. Kinds of Insurance.

Life insurance distinguished from other insurance. 128: 303.

## § 2. Insurable Interest.

What constitutes insurable interest in human life. 102: 554.

## § 3. Insurable Interest of Husband in Wife's Property.

Where marital rights are abrogated by statute. 104: 988.

Where marital rights are not abrogated. 104: 989.

Homestead property. 104: 989.

Legal title where husband advanced purchase money or wife agreed to give him a life estate. 104: 990, 991.

When he has a lien on the property. 104: 991.

Personal property. 104: 991.

Where husband acts as agent of wife. 104: 992.

## § 4. Life Insurance in Favor of Person Having No Interest.

General rule. 128: 304.

Reasons urged against validity. 128: 304.

Where insured makes one having no interest his beneficiary. 128: 310.

Where policy is apparently in favor of one having interest, but in fact not having. 128: 314.

Where interest terminates after issue of policy. 121: 315.

— By divorce. 128: 316.

— By payment or bar of debt. 128: 318, 319.

Waiver of want of interest by company. 128: 319.

Estoppel to raise want of interest. 128: 320.

— Effect of incontestable clause. 128: 321.

Right to proceeds where designation of beneficiary is invalid. 128: 322.

— When proceeds have been paid. 128: 322.

## § 5. Policy or Contract.

Acceptance of policy. 138: 63-66.

Validity of provision that suit be brought within certain time. 2: 571.

### § 6. When Contract is Complete.

Parol agreement. 69: 143.  
Payment of premium. 69: 150.  
Renewals. 69: 151.  
The application. 69: 152.  
Correspondence. 69: 152.

### § 7. What Constitutes Delivery of Policy.

In general. 138: 50.  
Actual or constructive delivery. 138: 52.  
Delivery to agent. 138: 53.  
Contracts completed by constructive delivery distinguished from executory contracts. 138: 54.  
— Relation back. 138: 59.

### § 8. Necessity and Purpose of Delivery.

At common law. 138: 29.  
Sealed instruments. 138: 30.  
As evidence of intent to complete contract. 138: 32.  
Completion of contract. 138: 34-36.  
— What constitutes a completed contract. 138: 38.  
— Question of intent. 138: 43.  
— Effect of arbitrary provisions. 138: 47.

### § 9. Conditional Delivery.

General rule. 138: 59.  
Delivery by mail. 138: 60.  
Payment of premium. 138: 60.  
Delivery in life and health. 138: 61.  
— Sound health defined. 138: 63.  
— Delivery in life. 138: 63.

### § 10. Construction of Policy.

In general. 10: 390.  
Exceptions, warranties and conditions. 10: 390.  
Phrase "vacant and unoccupied." 10: 390.  
Construction of fire policies. 132: 438.  
"Fire," "friendly fire" and "hostile fire," as used in policy, defined. 133: 1087-1089.  
Effect of clause in fire policy excepting loss during military invasion. 133: 1094.

Construction of clause in accident policy exempting company from liability for death from taking poison. 52: 363, 364.

What is death by accidental means. 8: 763-766.

What constitutes death by voluntary exposure to unnecessary danger, hazard or perilous adventure. 12: 272, 273.

### § 11. Earthquake Clause in Fire Policies.

Form of the clause. 132: 437.  
Construction. 132: 438-443.  
Definition of proximate cause. 132: 444.  
Pleading. 132: 444.  
Constitutionality of recent statutes. 132: 444.

### § 12. Mortgage Clause in Fire Policy.

Statutes and prescribed forms. 135: 750.  
Usual form. 135: 751.  
General effect. 135: 752.  
Consideration. 135: 754.  
Conditions not specially written in. 135: 755.  
Application of clause to sundry conditions. 135: 757.  
Breaches of condition known to mortgagee and of which he fails to give notice. 135: 759.  
Fixing amount of loss. 135: 759.  
Adjusting loss by insurer and insured and releases by the latter. 135: 760.  
Who may sue upon. 135: 770.

### § 13. Assignment of Policy.

Validity of assignment to one having no insurable interest in the life insured. 16: 906, 907.

### § 14. — Formal Requisites.

Oral assignment. 87: 490.  
Consideration. 87: 491.  
Assent of assignee. 87: 491.  
Delivery—Necessity. 87: 491.  
— Sufficiency. 87: 492.  
Notice to, and assent of, insurer—Necessity. 87: 495.  
— Effect on priority between assignments. 87: 495.  
— When required by policy. 87: 496.

When policy prescribes mode. 87: 497.      § 20. — Misrepresentation as to Health.

§ 15. — Who may Assign.

Beneficiary. 87: 497.

Assured. 87: 502.

Right of wife to assign policy on life of husband under statute exempting proceeds. 87: 504.

Right of wife to assign policy as security for debt of husband. 87: 503.

§ 16. — To Whom Policy may be Assigned.

Person without insurable interest. 87: 506.

— After death of assured. 87: 509.

Creditor taking policy as security. 87: 510.

§ 17. — Validity of Assignment.

In general. 87: 486.

When prohibited by the policy. 87: 487.

When only part of proceeds is assigned. 87: 487.

In fraud of rights of creditors. 87: 488.

— When assignee is wife or child of assignor. 87: 489.

Procured by fraud or duress. 87: 490.

§ 18. — Effect of Assignment.

Title of assignee. 87: 510.

Right of assignee to sue in own name. 87: 510.

When assigned as security—Interest of assignee. 87: 510.

— Absolute assignment may be shown to be. 87: 511.

— Amount recoverable by assignee. 87: 511.

— Title to proceeds in hands of assignee. 87: 511.

— Liability of assignee for premiums. 87: 511.

Invalid assignments—Effect on policy. 87: 513.

— Recovery of premiums paid by assignee. 87: 513.

— Law governing. 87: 513.

§ 19. Application.

What constitutes "good health" as used in an application for life insurance. 10: 242-245.

Representations of insured as warranties. 37: 372.

What constitutes "good health." 3: 634.

What constitutes "serious illness." 3: 635.

Materiality of representation. 3: 635.

Application written by agent of insurer. 3: 636.

Distinction between warranty and representation. 3: 636.

What constitutes "attendance by physician." 3: 637.

What constitutes consulting physician for "disease." 3: 637.

Waiver of forfeiture. 3: 637.

§ 21. — Applications Drawn by Agents.

Inserting false statements or answers. 9: 229.

Knowledge of agent imputed to insurer. 9: 232.

Procuring agent as agent of insurer. 9: 232.

Provisions in policy prohibiting agent from varying the contract or waive conditions. 9: 234.

§ 22. Forfeiture of Policy—Suicide as Avoiding Policy.

Presumptions and burden of proof. 34: 539.

Burden of proof. 34: 540.

Presumption of natural death. 84: 541.

Effect of failure of policy to provide against suicide. 84: 541.

Accidental or unintentional suicide. 84: 542; 60: 164.

Conditions against death in violation of law. 84: 543.

Death by "own act or hand" or "self-inflicted injury." 84: 544.

Insanity—Intentional suicide. 84: 546.

— Inability to understand moral character of act. 84: 546.

— Irresistible insane impulse. 84: 546.

Presumptions as to sanity. 84: 549.

Suicide "sane or insane" avoids policy so providing. 84: 550.

— Degree of insanity. 84: 552, 553.

Effect of incontestable clause. 84: 554.

Effect of intent to suicide when taking out policy. 84: 555.

**Conflict of laws**—Policy taken out in one state and death in another. 84: 555.

**§ 23. — Death in Known Violation of Law.**

General rule stated. 60: 160.

Must be cause of death. 60: 161.

Need not be immediate cause. 60: 162.

Death of person submitting to an abortion. 60: 163.

Death while violating Sunday law. 60: 164.

Death by suicide. 60: 164.

Death while acting in self-defense. 60: 165.

Death while intoxicated. 60: 165.

Death while committing act in violation of morality or public policy not forbidden by law. 60: 165.

**§ 24. — Voluntary Exposure to Danger.**

What constitutes in general. 139: 699; 12: 272, 273.

Negligence of insured. 139: 701.

Wanton or reckless exposure. 139: 704.

Knowledge of danger. 139: 705.

Obvious danger. 139: 705.

Voluntary act and exposure distinguished. 139: 706.

Indoor baseball. 139: 707.

Riding steeplechase. 139: 707.

Fishing and hunting. 139: 707.

Carelessly handling loaded gun. 139: 707, 708.

Sitting or sleeping on railroad track. 139: 708.

Walking on track or crossing trestle at night. 139: 709.

Going between or boarding cars. 139: 710.

Boarding freight-cars. 139: 712.

Alighting from train. 139: 714.

Riding on platform. 139: 715.

Attempting rescue. 139: 716.

Sleeping on steamboat boiler. 139: 717.

Falling from scaffold. 139: 717.

Climbing buildings. 139: 717.

Provoking fight. 139: 717.

**§ 25. — Increase of Hazard Avoiding Policy.**

Implied promises of insured. 66: 691.

Meaning of provision against increased hazard. 66: 692.

Increased hazard need not be cause of loss. 66: 693.

Acts of servants or tenants. 66: 695.

Use of adjoining premises. 66: 696.

Questions for jury and burden of proof. 66: 697.

Matters constituting increased hazard. 66: 698.

Dangerous machinery, processes or articles. 66: 698.

Alteration of premises. 66: 699.

Vacancy of premises. 66: 700.

Mortgage or other liens increase hazard. 66: 701.

**§ 26. Conflict of Laws Governing Non-forfeiture of Life Policy.**

Effect of statute on business done and policies issued in another state. 104: 483.

Effect of provision in policy that it shall be governed by laws of certain state. 104: 485.

Place of delivery of policy or payment of premium—Under stipulation in policy. 104: 488.

— In absence of express stipulation. 104: 489.

**§ 27. When Cause of Forfeiture Binds Mortgagee.**

Nature and effect of mortgage clause or slip. 58: 667, 671.

Breach of condition not causing forfeiture. 58: 668.

Right of mortgagor to recover as test. 58: 668.

Transfer of title by mortgagor. 58: 669.

— To mortgagee. 58: 669.

Carrying on hazardous business. 58: 670.

Leaving building unoccupied. 58: 670.

Effect of clause that insurance shall not be forfeited by any act or neglect of the mortgagor. 68: 672, 673.

**§ 28. Revival of Policy on Discontinuance of Cause of Forfeiture.**

General rule. 80: 305.

Mortgages. 80: 305.

Use of premises. 80: 306.

Other insurance. 80: 309.

Vacancy. 80: 310.

Temporary alienation. 80: 310.

**§ 29. Waiver of Forfeiture.**

Waiver of forfeiture for breach of condition by requiring further proofs of loss. 9: 236-238.

**§ 30. Validity of Stipulation Against Waiver of Conditions and Forfeitures.**

Where charter or other law limits action of insurer. 107: 100.  
Affecting designated agents or classes of agents but leaving the company power to act. 107: 101.  
Stipulations depriving all agents of power. 107: 102.

**§ 31. Waiver of Stipulation That Conditions and Forfeitures Shall not be Waived.**

Validity of stipulation. 107: 100.  
Waiver contrary to terms of policy. 107: 104.  
Imputing knowledge of agent to insurer. 107: 106.  
Constructive notice to insurer. 107: 108.  
False answers inserted in application by agent or medical examiner. 107: 108.  
Conditions to which restrictions are applicable. 108: 116.  
Powers of general agent. 108: 117.  
Notice of agent's want of authority. 108: 129.  
Failure to cancel policy. 107: 130.  
Failure to indorse waivers as expressly required by the policy. 107: 132.  
Breaches of condition antedating issuing of policy. 107: 135.  
Breaches of condition occurring after issuing of policy. 107: 144-149.

**§ 32. Risks and Causes of Loss Covered by Fire Policy.**

Fire defined. 133: 1087.  
Friendly and hostile fire distinguished. 133: 1089.  
Origin of fire—Loss must proximately result. 133: 1091.  
— Explosions. 133: 1091.  
— Lightning. 133: 1093.  
— Falling walls. 133: 1094.  
— Riots, mobs and other lawless organizations. 133: 1094.

**§ 33. Same.**

Cost of removing goods to safe place. 23: 915.  
Goods lost by theft. 23: 915.  
Loss by explosion following fire. 23: 915-916.

Fire caused by collision of vessel. 23: 916.

Lightning. 23: 916.

Collapse of building followed by fire. 23: 917.

Invasion, insurrection or riot. 23: 917.

**§ 34. What is Total Loss or Destruction in Insurance Other Than Marine.**

In general. 59: 810.

Structures not destructible by fire. 59: 811, 812.

Gutted brick or stone buildings. 59: 811, 812.

Removal of part of property before fire. 59: 811, 812.

Impossibility of repair. 59: 813, 814.

Law or ordinance preventing reconstruction or repair. 59: 813, 814.

**§ 35. Proximate and Remote Cause of Loss.**

General principles. 36: 852.

Negligence or misconduct of insured. 36: 852.

Marine insurance—Loss by perils of the sea. 36: 854.

— Capture by the enemy. 36: 855.

— Piracy and insurrection. 36: 856.

— Bursting of boilers. 36: 856.

— Ice preventing navigation. 36: 857.

— Collision followed by fire. 36: 857.

Fire insurance. 36: 857.

— Fire accompanied by explosion. 36: 858.

— Fall of building. 36: 858.

— Invasion by military or usurped power. 36: 859.

— Acts of municipal authorities preventing rebuilding. 36: 859.

— Acts done to save goods. 36: 859.

Accident and life insurance.

— Excepted peril incurred by mistake. 36: 859.

— Secondary results of accident. 36: 859.

— Drowning. 36: 860.

— Fits placing insured in danger. 36: 860.

— Intemperance shortening life. 36: 860.

— Death while violating law. 36: 860.

**§ 36. Certificate of Loss.**

Necessity for. 23: 258.  
 Requisites and sufficiency. 23: 259.  
 Waiver. 23: 262.

**§ 37. Proof of Death.**

Necessity for proof. 137: 718.  
 What constitutes proof. 137: 719.  
 Where insured has disappeared. 137: 723.  
 Manner of making proof. 137: 724.  
 By whom proof should be made. 137: 726.  
 Time when proof must be made. 137: 727-729.  
 Waiver of proof, express and implied. 137: 730, 731.  
 Coroner's inquest as evidence of cause of death of insured. 95: 763, 764.

**§ 38. Proof of Cause of Death.**

Presumptions and burden of proof. 50: 441.  
 Death by suicide. 50: 442.

**§ 39. Adjustment of Loss.**

Validity of agreements to submit to arbitration. 2: 566-571.

**§ 40. Right to Proceeds—When Designation of Beneficiary is Invalid or Ineffective.**

In general. 128: 322.  
 Effect of payment by the company. 128: 324.

**§ 41. — Effect of Death of Beneficiary Before Insured.**

In general. 11: 721; 48: 399.  
 Illustrations. 11: 722-724.

**§ 42. — Policy Payable to Heirs.**

Who are heirs in general. 44: 404.  
 Widow and children. 44: 406.  
 Divorced wife. 44: 409.  
 Intestate law of descent governs and proceeds from no part of testator's estate. 44: 409.

**§ 43. Application of Proceeds of Policy on Mortgaged Premises.**

Insurance by mortgagor alone. 118: 968.  
 Insurance by mortgagee alone. 118: 969.

Insurance at expense of mortgagor. 118: 970.

Insurance for benefit of mortgagee. 118: 971.

Application by agreement. 118: 973.  
 Assignment of policy as collateral. 118: 973.

Forfeiture by mortgagor. 118: 974.

**§ 44. Right of Insurer to Subrogation.**

In general. 44: 732.  
 Clauses in mortgages. 44: 733.  
 Clauses in policy or bills of lading defeating the right. 44: 734.  
 Payment prerequisite. 44: 736.  
 Who may sue for. 44: 738.

**§ 45. Action on Policy.**

Time to sue for payments made on void policy. 136: 475.

**§ 46. Contract of Reinsurance and Remedies of Parties.**

Nature of contract—Custom. 45: 442.  
 Risks included or covered. 45: 444.  
 General rights and liabilities of parties. 45: 445.  
 Action by first insured. 45: 446.  
 — Compromise, settlement or contest. 45: 446.  
 Action by insured against reinsurer. 45: 447.  
 Action by reinsured against reinsurer. 45: 448.  
 Construction and effect of particular clauses. 45: 450.

**§ 47. Fidelity or Employer's Liability Insurance — Commencement and Duration of Liability.**

Commencement of risk. 100: 777.  
 Duration of risk. 100: 778.  
 Renewal bonds. 100: 780.

**§ 48. — Nature, Construction and Validity of Contract.**

Nature of contract. 100: 775.  
 Construction of contract. 100: 775.  
 Validity of contract. 100: 779.  
 Signature by employee. 100: 779, 780.

**§ 49. — Warranties, Representations and Concealment.**

In general. 100: 780.  
 Materiality and truth of statements. 100: 781.  
 Misrepresentations not fraudulently made. 100: 781.

Representations by president of insured corporation. 100: 782.

Statements relative to accounts of employee. 100: 782.

**§ 50. — Duties of Agent or Employee.**

Statements and concealment concerning. 100: 784.

Duties covered by bond. 100: 784.

Effect of change in duties. 100: 784.

**§ 51. — Unfaithful and Dishonest Conduct of Employee.**

Knowledge and condonation by employer. 100: 784.

Imputed knowledge. 100: 785.

Evidence of honesty or dishonesty. 100: 785.

Speculation by employee. 100: 786.

Larceny, embezzlement and conversion. 100: 786.

— Prosecution of employee. 100: 786.

**§ 52. — Diligence of Insured, Notice and Proof of Loss or Dishonesty.**

Diligence of employer. 100: 787.

Notice of loss or dishonesty. 100: 788.

Proof of loss. 100: 790.

**§ 53. — Release and Subrogation.**

Release of surety. 100: 790.

Cancellation of bond. 100: 790.

Subrogation. 100: 791.

**INSURRECTION.**

Suspension of writ of habeas corpus during. See Habeas Corpus, § 1.

Effect of clause in fire policy excepting loss during. See Insurance, § 10.

**INTEMPERANCE.**

As justification for breach of contract to marry. See Breach of Marriage Promise, § 1.

**INTENT.**

Necessary to constitute abandonment. See Abandonment, § 2.

As element effecting materiality of alteration of writing. See Alteration of Instruments, § 4.

As element of bigamy. See Bigamy, § 1.

As guide in ascertaining boundaries. See Boundaries, § 1.

As element of burglary. See Burglary, § 1.

Admissibility of evidence of other offenses to show. See Criminal Law, § 28.

As element of larceny. See Larceny, § 7.

As element of mayhem. See Mayhem, § 1.

**INTEREST.**

As damages. See Damages, § 3.

Application of payments to principal and interest. See Payment, § 11.

Obligation of state to pay interest on state debt. See States, § 5.

What transactions are usurious. See Usury, § 1.

**§ 1. Agreements for Higher or Exorbitant Rate After Default.**

Decisions questioning validity. 91: 584.

Prevailing trend of decisions—Where interest runs from maturity. 91: 586.

— Where interest runs from date of debt. 91: 586.

Whether agreements are usurious. 91: 588.

Waiver of stipulation. 91: 589.

**INTEREST-BEARING STOCK.**

As preferred stock. See Corporations, § 19.

**INTERESTED PARTIES.**

Entitled to appeal. See Appeal and Error, § 2.

**INTERFERENCE WITH BUSINESS.**

By boycott. See Conspiracy, § 2.

**INTERNAL REVENUE.**

**§ 1. Effect of Failure to Stamp Writings.**

Provisions of act of Congress of 1898. 84: 186.

Power of Congress to make rules of evidence. 84: 186.

Whether national act applies to state courts. 84: 188.

Burden of proving intent of omissions. 84: 190.

Secondary or collateral evidence of unstamped writing. 84: 191.

Validity of unstamped writings. 84: 191.

Intent to evade the law. 84: 192.

Writs and processes. 84: 192.

Recording of unstamped writings. 84: 193.

Subsequent stamping—Time, place and effect. 84: 193.

Pleading and practice. 84: 196.

Omission of cancellation. 84: 197.

Criminal prosecutions based on unstamped writings. 84: 197.

**INTERNATIONAL EXTRADITION.**

See Extradition, § 15.



**INTERPLEADER.**

INTRODUCTION, § 1.  
 PROPERTY AND FUNDS SUBJECT TO  
 INTERPLEADER, § 2.  
 PERSONS ENTITLED TO INTERPLEAD,  
 § 3.  
 ESSENTIAL PREREQUISITES TO RIGHT  
 TO INTERPLEAD, § 4.  
 SUBSTITUTING ONE DEFENDANT FOR  
 ANOTHER, § 5.

**§ 1. Introduction.**

General grounds and purposes. 91:  
 594.  
 Basis of proceeding. 91: 595.  
 Not a proceeding in rem. 91: 596.  
 Scope of remedy. 91: 597.  
 Whether in disfavor. 91: 597.  
 Bills in the nature of interpleader. 91:  
 598.

**§ 2. Property and Funds Subject to Interpleader.**

Money due on building contracts. 91:  
 611.  
 Corporate stock and dividends. 91:  
 611.  
 Proceeds of negotiable instruments.  
 91: 611.  
 Insurance money. 91: 612.  
 Damages in eminent domain. 91: 613.  
 Funds that have been garnished. 91:  
 613.  
 Miscellaneous funds and subjects. 91:  
 613.

**§ 3. Persons Entitled to Interplead.**

In general. 91: 605.  
 Wrongdoers. 91: 605.  
 Agents, attorneys, brokers and vendors.  
 91: 606.  
 Receivers and tenants. 91: 607.  
 Purchasers of personalty. 91: 607.  
 Bailees, warehousemen and deposi-  
 taries. 91: 608.  
 Banks. 91: 608.  
 Carriers. 91: 609.  
 Trustees. 91: 609.  
 Executors and administrators. 91:  
 610.

**§ 4. Essential Prerequisites to Right to Interplead.**

Time to file bill. 91: 598.  
 Disinterestedness of complainant. 91:  
 598.  
 Absence of other remedy. 91: 600.  
 Privity—Common source of title. 91:  
 600.  
 Identity of demands. 91: 601.

Doubt and dispute as to claims. 91:  
 602.  
 Legal and equitable demands. 91:  
 603.  
 Necessity and effect of pending suit.  
 91: 603.  
 Possession of subject of controversy.  
 91: 604.  
 Deposit or payment into court. 91:  
 604.  
 Other conditions. 91: 604.

**§ 5. Substituting One Defendant for Another.**

Nature and effect of proceeding. 1:  
 800.  
 Pleading and practice. 1: 801.  
 Form of judgment. 1: 802.

**INTERPOLATION.**

To supply omissions in deeds. See Deeds,  
 § 2.

**INTERPRETERS.**

Taking testimony through as denying ac-  
 cused right to confront witness. See Con-  
 stitutional Law, § 13.

**INTERRUPTION.**

Of adverse possession. See Adverse Posses-  
 sion, § 7.

**INTERSECTING VEINS.**

Of ore included in mineral patent. See  
 Mines and Minerals, § 6.

**INTERSECTING WIRES.**

Duty to guard. See Electricity, § 1.

**INTERSTATE COMMERCE.**

State regulation of. See Commerce, § 1.

**INTERSTATE CONSOLIDATION.**

Of corporations. See Corporations, § 61.

**INTERSTATE CORPORATIONS.**

Taxation of interstate consolidated corpora-  
 tions. See Taxation, § 7.

**INTERSTATE EXTRADITION.**

See Extradition, § 2.

**INTERURBAN RAILROADS.**

As additional servitudes. See Railroads, § 3.

**INTERVENING CAUSE.**

As proximate cause of injury. See Negli-  
 gence, § 10.

**INTERVENTION.**

In civil actions. See Parties, § 3.

**INTESTATES.**

Succession of estates of. See Descent, § 1.

Administration of estates of. See Executors and Administrators.

**INTIMIDATION.**

By strikers and pickets. See Trade Unions, § 1.

**INTOXICATING LIQUORS.**

Police power to regulate sale or manufacture of. See Constitutional Law, § 7.

Use of, by jury as ground for new trial. See Criminal Law, § 60.

Police power of cities to regulate business of dealing in liquor. See Municipal Corporations, § 4.

**§ 1. In General.**

Validity of local option laws. 114: 324.

Distribution of liquor by social clubs as violation of liquor laws. 24: 35-50.

**§ 2. Liability of Seller for Acts of Drunkard.**

Personal injuries. 85: 449.

Assault and battery. 85: 450.

Homicide. 85: 450.

Suicide. 85: 451.

Crime resulting in imprisonment. 85: 451.

Property or money loss to wife. 85: 452.

Mismanagement of horses. 85: 452.

Persons liable. 85: 453.

Contributory acts of injured person. 85: 453.

Damages. 85: 453.

**§ 3. Illegal Sale.**

Judicial notice of intoxicants. 12: 353.

Prohibited sales and gifts in general. 12: 353.

Sales to minors. 12: 354.

Sales by agents. 12: 354.

Liability of landlord for illegal sales made on leased premises. 12: 354.

**INTOXICATION.**

Validity of contracts of intoxicated persons. See Contracts, § 12.

As contributory negligence. See Negligence, § 13.

**INVADING PROVINCE OF JURY.**

In instructions. See Criminal Law, § 53; Trial, § 5.

**INVENTIONS.**

Patent of. See Patents.

**INVENTORIES.**

Of insolvents. See Assignments for Benefit of Creditors, § 1.

**INVESTMENTS.**

Which trustee may make without incurring liability in case of loss. See Trusts, § 10.

By guardians. See Guardian and Ward, § 8.

**INVOLUNTARY MANSLAUGHTER.**

See Homicide, § 10.

**INVOLUNTARY PAYMENTS.**

Right to recover payments made involuntarily. See Payment, § 3.

**IRREPARABLE INJURY.**

What constitutes enjoined irreparable injury. See Injunction, § 2.

**IRREPEALABLE LAWS.**

What are and power of legislature to enact. See Statutes, § 7.

**IRRESISTIBLE FORCE.**

Liability of warehousemen for loss by. See Warehousemen, § 6.

**IRRESISTIBLE IMPULSE.**

As justification for crime. See Criminal Law, § 8.

**IRRESPONSIBLE AGENCY.**

As proximate cause of injury. See Negligence, § 10.

**IRREVOCABLE PROXY.**

To vote corporate stock. See Corporations, § 32.

**IRRIGATION.**

Condemnation of land for. See Eminent Domain, § 4.

Riparian owner's right to use water for. See Waters and Watercourses, § 5.

Liability of irrigation companies for negligence or failure to supply water. See Waters and Watercourses, § 14.

**ISLANDS.**

Accretions to islands in navigable lakes and rivers. See Navigable Waters, § 7.

**ISSUANCE.**

Of writ of execution. See Execution, § 1.

**ITEMS.**

To be set out in claims against estates of decedents. See Executors and Administrators, § 18.

**JAIL.**

As building subject to arson. See Arson, § 2.

**JEWELRY.**

As baggage. See Carriers, § 58.

Exempt from execution. See Exemptions, § 4.

**JOINDER.**

Of husband in wife's deed. See Husband and Wife, § 13.

**JOINT ADMINISTRATION.**

Authority of one joint executor or administrator. See Executors and Administrators, § 8.

**JOINT ADOPTION.**

See Adoption, § 1.

**JOINT ADVENTURE.**

Distinguished from partnership. See Partnership, § 2.

**JOINT FINDERS.**

Rights of joint finders of lost goods. See Finding Lost Goods, § 1.

**JOINT LIABILITY.**

For tort. See Torts, § 1.

**JOINT OBLIGORS.**

Accords and satisfaction by. See Accord and Satisfaction, § 6.

Agency between. See Principal and Agent, § 1.

Effect of release of one. See Release, § 2.

**JOINT POWER OF ATTORNEY.**

Construction of. See Principal and Agent, § 10.

**JOINT STOCK COMPANIES.**

Equity jurisdiction over. See Associations, § 4.

**JOINT STOCK COMPANY.**

Distinguished from partnership. See Partnerships, § 2.

**JOINT TENANTS.**

Distinguished from partnership. See Partnership, § 2.

Part owners of vessels as joint tenants. See Shipping, § 1.

Right to purchase at judicial sale. 136: 817.

**JOINT WILLS.**

What constitutes joint, mutual or reciprocal will. See Wills, § 7.

**JOURNAL OF LEGISLATURE.**

Entry of constitutional amendments in. See Constitutional Law, § 1.

Proof of enactment of statute by. See Statutes, § 1.

**JUDGES.**

Review of ministerial acts on certiorari. See Certiorari, § 3.

Authorized to punish contempts. See Contempt, § 4.

Mandamus against judicial officers and tribunals. See Mandamus, § 6.

Absence from trial. See Trial, § 1.

**§ 1. In General.**

Affinity or relationship to party as disqualification. 79: 199.

Disqualification to purchase at judicial or other forced sale. 136: 805.

**§ 2. Personal Liability.**

Judges. 137: 47.

Quasi-judicial officers. 137: 50.

Ministerial acts. 137: 52.

Malicious or corrupt acts. 137: 52.

Acts without, or in excess of jurisdiction. 137: 53.

**§ 3. Liability of Sureties on Official Bonds.**

In general. 91: 573.

Ministerial acts. 91: 574.

Judicial acts—General rule. 91: 575.

— What are. 91: 575.

— Corruptly done. 91: 576.

— Approval of bonds. 91: 576.

— Without jurisdiction. 91: 576.

For money received. 91: 577.

— As agent for collection. 91: 577.

Acts in ex officio or appointive capacity. 91: 579.

**JUDGMENT.**

NATURE AND VALIDITY, § 1.

WHEN VOID, § 2.

VALIDITY AND EFFECT OF JUDGMENT FOR OR AGAINST DECEASED PERSON, § 3.

SAME, § 4.

ENTIRETY OF JUDGMENTS VOID AS TO SOME PARTIES, § 5.

BY CONFESSION, § 6.

BY CONSENT, § 7.

BY DEFAULT, § 8.

ENTRY, § 9.

NUNC PRO TUNC ENTRY, § 10.

DOCKETING, § 11.

WRITS OF ERROR CORAM NOBIS AND VOBIS, § 12.

— ERRORS REVIEWABLE BY, § 13.

OPENING AND VACATING—DURATION OF POWER OF COURT, § 14.

— WHEN NOT SPECIALLY AUTHORIZED BY STATUTE, § 15.

- AGAINST INFANTS, § 16.
- NEGLIGENCE OR MISTAKE OF ATTORNEY, § 17.
- SAME, § 18.
- RESTITUTION ON VACATION, § 19.
- EQUITABLE RELIEF AGAINST JUDGMENT—NEGLIGENCE AS BAR, § 20.
- FALSITY OF SHERIFF'S RETURN, § 21.
- RELIEF FROM JUDGMENT OBTAINED BY PERJURY, § 22.
- DECREES OF PROBATE AND OTHER COURTS HAVING EXCLUSIVE JURISDICTION OF ESTATES OF DECEDENTS AND INCOMPETENT PERSONS, § 23.
- RELIEF OTHER THAN BY BILL OF REVIEW, § 24.
- COLLATERAL ATTACK UPON JUDGMENT, § 25.
- FALSE RETURN, § 26.
- FORGED OR ALTERED ENTRIES, § 27.
- EXTRATERRITORIAL EFFECT, § 28.
- MERGER, § 29.
- CONCLUSIVENESS, § 30.
- WHAT JUDGMENTS ARE RES ADJUDICATA, § 31.
- GENERAL REQUIREMENTS RESPECTING EFFECT OF JUDGMENTS, § 32.
- EVIDENCE OF RES ADJUDICATA, § 33.
- PERSONS ESTOPPED, § 34.
- JUDGMENTS AGAINST PERSONS NOT IN BEING, § 35.
- JUDGMENT AGAINST CORPORATION, § 36.
- JUDGMENT AGAINST INDEMNITORS, § 37.
- JUDGMENT AGAINST INFANTS, § 38.
- JUDGMENT AGAINST RECEIVERS, § 39.
- JUDGMENT AGAINST CITY OR COUNTY, § 40.
- JUDGMENT AGAINST GOVERNMENTAL BODY OR ITS OFFICERS, § 41.
- JUDGMENT AGAINST A TENANT, § 42.
- ADMISSIBILITY AND EFFECT AGAINST SURETY OF JUDGMENT AGAINST PRINCIPAL, § 43.
- LIEN ATTACHES, § 44.
- FOREIGN JUDGMENTS, § 45.
- PROPERTY AND ESTATES TO WHICH — JUDGMENTS OF COURTS OF FOREIGN COUNTRIES, § 46.
- JUDGMENTS OF COURTS OF SISTER STATE, § 47.
- ASSIGNMENT OF JUDGMENT, § 48.
- VACATING SATISFACTION, § 49.
- RENEWAL, § 50.
- ENFORCEMENT AND REVIVAL, § 51.
- DORMANT AND STALE JUDGMENTS, § 52.
- TIME LIMIT ON ENFORCEMENT OF JUDGMENT, § 53.
- SETOFF OF JUDGMENT AGAINST JUDGMENT, § 54.

Against unknown owners. See Absentees, § 2.  
 Accord and satisfaction of judgment. See Accord and Satisfaction, § 5.  
 As color of title. See Adverse Possession, § 10.

Right to appeal from satisfied judgment. See Appeal and Error, § 3.  
 Award of arbitrators. See Arbitration and Award, § 3.  
 Effect of decisions of tribunals of associations. See Associations, § 3.  
 Relief against judgment for grounds arising after its entry by independent proceeding. See Audita Querela, § 1.  
 Decisions of tribunals of mutual aid society. See Beneficial Associations, § 7.  
 Doctrine of stare decisis. See Courts, § 6.  
 Creditor's bill to enforce. See Creditors' Suit, § 1.  
 In criminal case as res adjudicata. See Criminal Law, § 63.  
 Divorce decree. See Divorce, § 14.  
 Attack upon divorce decree after death of party. See Divorce, § 15.  
 Estoppel to question void or voidable divorce decree. See Divorce, § 16.  
 Lien of judgment on homestead. See Homestead, § 4.  
 Against married women. See Husband and Wife, § 25.  
 For or against insane persons. See Insane Persons, § 8.  
 Mandamus to compel vacating of orders and decrees. See Mandamus, § 6.  
 Mandamus to correct errors in judgments, records and dockets. See Mandamus, § 6.  
 Partition decree. See Partition, § 7.  
 In suit to quiet title. See Quieting Title, § 3.  
 Against receivers. See Receivers, § 8.  
 In action to reform writing. See Reformation of Instruments, § 6.  
 For taxes. See Taxation, § 16.  
 For purchase price of land as waiver of vendor's lien. See Vendor and Purchaser, § 9.

### § 1. Nature and Validity.

Is not a contract. 2: 414.  
 Effect of satisfaction or other cause pendente lite terminating plaintiff's cause of action. 17: 143.  
 Validity of judgment against a married woman. 134: 927-943.

### § 2. When Void.

When court has no jurisdiction. 29: 78.  
 When court exceeds jurisdiction. 29: 78-84.

### § 3. Validity and Effect of Judgment for or Against Deceased Person.

Common-law rule. 126: 622.  
 Whether void or merely erroneous. 126: 625.  
 Where one of the parties was dead when the suit was commenced. 126: 631.

Where party died on day of judgment. 126: 636.

Rule where fact of death appears on record or was known to opposite party. 126: 637.

Where deceased was merely nominal party. 126: 637.

Where one of several parties dies before entry of judgment.

#### § 4. Same.

Voidable only. 29: 816.

For or against joint parties one of whom is dead. 29: 817.

Void in some jurisdictions. 29: 817.

Jurisdiction must be acquired before death. 29: 818.

Against extinct corporation. 29: 819.

#### § 5. Entirety of Judgments Void as to Some Parties.

Void as to one as void as to all. 91: 362.

Where held void in tanto. 91: 362.

Where valid as to defendant served. 91: 366.

Disposition on appeal. 91: 368.

Conclusion. 91: 369.

#### § 6. By Confession.

Construction of warrant of attorney. 132: 626.

By confession against a married woman. 134: 940.

#### § 7. By Consent.

Against a married woman. 134: 940.

#### § 8. By Default.

Against married woman. 134: 941.

#### § 9. Entry.

Necessity for entry of judgment before it can be received in evidence in support of a proceeding taken under it. 129: 745.

#### § 10. Nunc Pro Tunc Entry.

Power of courts to make. 4: 828.

When proper. 4: 829.

When not proper. 4: 831.

Evidence required to justify. 4: 831.

Notice necessary. 4: 883.

Rights of third parties not affected by entry. 4: 883.

Effect of entry. 4: 883.

Application for entry. 4: 883, 884.

#### § 11. Docketing.

General principles. 87: 665.

Creation of lien. 87: 666.

— Irregularities in docketing. 87: 668.

— Errors or omissions in names. 87: 669.

Indexing. 87: 671.

#### § 12. Writs of Error Coram Nobis and Vobis.

Obsolete. 97: 372.

Distinguished from ordinary writs of error. 97: 363.

Authority of courts to issue. 97: 364.

As writ of right. 97: 365.

For and against whom may issue. 97: 365.

Petition or affidavit. 97: 366.

Notice of application. 97: 367.

Answer. 97: 367.

Trial and issues thereat. 97: 368.

Judgment. 97: 369.

Negligence or laches as bar. 97: 372.

#### § 13. — Errors Reviewable by.

Errors of law. 97: 369.

Errors of fact. 97: 369.

— Relating to death or disability of party. 97: 370.

— Causing, failure to prosecute or defend. 97: 370.

— In criminal proceedings. 97: 371.

— In issuing process. 97: 371.

#### § 14. Opening and Vacating—Duration of Power of Court.

Time of making application. 52: 795.

Time of granting relief. 52: 795.

After expiration of statutory time. 52: 797.

Effect of laches in making application. 52: 795, 799.

#### § 15. — When not Specially Authorized by Statute.

Power independent of statute. 60: 633.

What courts may exercise power. 60: 633.

— Probate courts. 60: 633.

Power is exclusively judicial. 60: 634.

Who may move to vacate. 60: 635.

— Third persons. 60: 636.

— Grantees and assignees. 60: 637.

After lapse of term. 60: 638.

Chancery rules. 60: 640, 641.

Void judgment. 60: 642.  
 Defects not disclosed by record. 60: 644, 646.  
 Evidence must be clear. 60: 644.  
 Mere defects in form or service of process. 60: 645.  
 Extrinsic evidence in rebuttal. 60: 646.  
 Where terms of court have been abolished. 60: 647.  
 Unauthorized appearance of attorney. 60: 648.  
 Fraud in procuring judgment. 60: 649.  
 Collusion in procuring judgment. 60: 650.  
 Mistake. 60: 651.  
 Errors. 60: 652.  
 Irregularities. 60: 654.  
 Judgment for or against decedent. 60: 655.  
 Against infant, insane person or married woman. 60: 656.  
 Divorce decrees. 60: 658.  
 Matters occurring after entry. 60: 659.  
 Vacating as to only some of parties. 60: 659.  
 Notice of motion. 60: 659.  
 Laches barring right. 60: 660.  
 Effect of order vacating judgment. 60: 662.

#### § 16. — Against Infants.

Right to vacate judgment. 112: 200.  
 By original bill. 112: 200.  
 Leave of court to file bill. 112: 201.  
 Grounds for vacation. 112: 201.  
 Parties entitled to impeach. 112: 201.  
 Time to file bill—During or after minority. 112: 202.  
 Intervening rights of third persons. 112: 202.

#### § 17. — Negligence or Mistake of Attorney.

General rule. 96: 108.  
 Rule where negligence or mistake is such that it would warrant relief if it were that of the party. 96: 109.  
 Mistake of law. 96: 110.

#### § 18. — Same.

General rule. 80: 264.  
 Necessity that client be diligent. 80: 265.  
 Failure to answer complaint. 80: 265.

Failure to attend court or trial. 80: 266.

— When excusable. 80: 269.

— In divorce suit. 80: 269.

Accident or illness of attorney. 80: 270.

Duty to employ other counsel. 80: 271.

#### § 19. — Restitution on Vacation.

Restitution of persons dispossessed under a judgment afterward set aside. 17: 264, 265.

#### § 20. — Equitable Relief Against Judgment — Negligence as Bar.

Duties of litigants. 53: 444.

General rule. 53: 445.

In allowing default. 53: 445.

In pleading. 53: 446.

In preparation for trial. 53: 446.

In management of trial. 53: 447.

In not attending trial. 53: 447.

In prosecuting appeal. 53: 448.

Of attorney or agent. 53: 449.

Equitable defenses. 53: 450.

Want of diligence brought about by adverse party. 53: 451.

#### § 21. — Falsity of Sheriff's Return.

In general. 124: 764.

Absence of meritorious defense. 124: 765.

Where facts presumptively unknown to officer. 124: 766.

Where plaintiff did not induce false return. 124: 767.

#### § 22. — Relief from Judgment Obtained by Perjury.

In general. 25: 165.

Cases favoring the granting of relief. 25: 165.

Cases denying relief. 25: 167.

#### § 23. — Decrees of Probate and Other Courts Having Exclusive Jurisdiction of Estates of Decedents and Incompetent Persons.

General principles. 106: 640.

Decrees settling accounts. 106: 640.

Orders for sale and proceedings thereunder. 106: 642.

Decrees of distribution. 106: 642.

Granting probate of will. 106: 643.

Granting letters of administration. 106: 643.  
 Limitations. 106: 645.

**§ 24. — Relief Other Than by Bill of Review.**

Nature of equity jurisdiction. 54: 218.  
 When enforcement of judgment is inequitable. 54: 219.  
 Judgments subject to equitable relief. 54: 219.  
 General grounds for relief. 54: 221.  
 Showing meritorious cause of action or defense. 54: 222.  
 Equitable defenses to former action. 54: 224.  
 Defenses to original action. 54: 226.  
 Newly discovered matters. 54: 227.  
 Exceptions to rule that known defenses must have been presented. 54: 228.  
 Error or irregularity in former action. 54: 229.  
 Fraudulent concealment. 54: 233.  
 Fraud in management of action. 54: 236.  
 Taking judgment contrary to some agreement or representation. 54: 238.  
 Wrongful act of plaintiff. 54: 240.  
 Mistake, accident and surprise. 54: 240.  
 Unauthorized appearance of attorney. 54: 246.  
 Negligence of complainant. 54: 248.  
 Fraud practiced after rendition of judgment. 54: 250.  
 Persons entitled to relief. 54: 251.  
 — Sureties. 54: 257.  
 Persons against whom relief may be granted. 54: 255.  
 Causes occurring after rendition. 54: 256.  
 Satisfied judgments. 54: 256.  
 Equitable reason for not enforcing judgment. 54: 257.  
 Laches barring relief. 54: 259.  
 Complainant must do equity. 54: 259.  
 Mode of obtaining and granting relief. 54: 260.  
 Venue of proceeding. 54: 261.

**§ 25. Collateral Attack upon Judgment.**

What constitutes. 23: 104.  
 Motion to set aside as direct attack. 23: 104, 105.  
 Grounds for setting aside judgment. 23: 106.

Index-Digest—14

Writs of error coram nobis and coram vobis. 23: 107.

Writ of audita querela as direct attack. 23: 107.

Writ of certiorari as direct attack. 23: 108.

Habeas corpus as collateral attack. 23: 108.

Proceedings in which judgments are protected. 23: 111.

Judgments which are void and subject to collateral attack. 23: 112-119.

**§ 26. — False Return.**

Because of false return of service of summons. 124: 768.

**§ 27. — Forged or Altered Entries.**

General rule. 80: 479.  
 Entries by clerk. 80: 479  
 Entries by judge. 80: 483.  
 Subsequent alterations. 80: 483.

**§ 28. Extraterritorial Effect.**

Extraterritorial effect of divorce decree. 83: 816.

**§ 29. Merger.**

Merger of judgment in judgment. 92: 778.

**§ 30. Conclusiveness.**

Who are concluded. 15: 142.  
 Matters concluded. 15: 142.  
 On collateral attack. 15: 143.  
 Judgment for or against person in one capacity as bar to suit by or against him in another capacity. 7: 175, 176.  
 Conclusiveness, against beneficiaries, of judgments against trustees. 73: 165-168.

**§ 31. What Judgments are Res Adjudicata.**

Requisites of judgment as bar. 14: 250.  
 Illustrations. 14: 250, 252.  
 Illustrations showing what judgments are and are not res adjudicata. 8: 229, 230.  
 Judgment of nonsuit as res adjudicata. 49: 831-833.  
 Effect of appeal or right of appeal on judgment as res adjudicata. 37: 29-32.

**§ 32. General Requirements Respecting Effect of Judgments.**

In general. 112: 22.

Necessity that judgment adjudicate the merits. 112: 23.

What persons are in privity. 112: 24.

**§ 33. Evidence of Res Adjudicata.**

Record. 44: 562.

Extrinsic evidence. 44: 562.

Burden of proof. 44: 563.

Must remove all uncertainty. 44: 563, 565.

Decision on two or more issues. 44: 564.

Judgment on demurrer. 44: 566.

Evidence that matter is not res adjudicata. 44: 568.

Character of evidence. 44: 570.

Examination of jurors as to their conclusions. 44: 571.

**§ 34. Persons Estopped.**

Persons not parties. 2: 876.

Who are parties within rule. 2: 877.

Persons in privity with parties. 2: 878.

Sureties or persons liable over to parties. 2: 878.

**§ 35. — Judgment Against Persons not in Being.**

In general. 97: 762.

Doctrine of representation—Necessity. 97: 765.

— By first estate of inheritance. 97: 763.

— By life tenant. 97: 763.

— What is sufficient representation. 97: 764.

Interests of person not in being must be transferred to the fund. 97: 766.

Partition suits. 97: 766.

Probate and mortgage foreclosure proceedings. 97: 767.

Validity of law authorizing sale of property of persons who are not in being. 97: 767.

**§ 36. — Judgment Against Corporation.**

Conclusiveness in general. 97: 463.

Effect of want of service of process on stockholder. 97: 467.

Nonresident stockholders. 97: 468.

Default judgments. 97: 468.

Effect of fraud, mistake or want of jurisdiction. 97: 469.

Effect of special defenses. 97: 470.

New York rule. 97: 471.

**§ 37. — Judgment Against Indemnitors.**

In general. 22: 204.

Judgment against principals. 22: 204.

Conclusive when indemnitor has notice of suit. 22: 205.

Not conclusive when not notified. 22: 206.

**§ 38. — Judgment Against Infants.**

Conclusiveness in general. 112: 199.

Presumption of validity. 112: 200.

Intervening rights of third persons. 112: 202.

**§ 39. — Judgment Against Receivers.**

On parties represented. 94: 54.

In courts other than those appointing receiver. 94: 55.

Personal liability of receiver. 94: 56.

Enforcement of judgment. 94: 56.

**§ 40. — Judgment Against City or County.**

As binding on the state and the people thereof. 27: 195-198.

**§ 41. — Judgment Against Governmental Body or Its Officers.**

In general. 105: 205.

Judgment against state or nation. 105: 205.

Judgment against municipal bodies. 105: 208.

Persons not parties—Matters of general interest. 105: 208.

— Matters not of general interest. 105: 209.

Judgment against officer—Effect against government. 105: 210.

— Effect against third persons. 105: 211.

— Taxpayers, citizens and bondholders. 105: 213, 215.

Judgment against officer representing different interests. 105: 217.

**§ 42. — Judgment Against a Tenant.**

Privity between tenant and landlord. 112: 24.

Effect of landlord taking possession pending suit. 112: 24.



**Estoppel of tenant to take advantage of his own wrong.** 112: 25.  
**Collusion between plaintiff and tenant.** 112: 25.  
**General rule.** 112: 26.  
**Landlord having notice of suit.** 112: 26.  
 — Assisting in defense. 112: 27.  
 — Statutes requiring tenant to notify landlord. 112: 32.  
 — Nonresident landlord. 112: 33.  
**Judgment of eviction for nonpayment of rent.** 112: 33.  
**Judgment for rent or an installment thereof.** 112: 35.  
**Foreclosing lien for material furnished tenant.** 112: 38.  
**Against lessee of railroad.** 112: 38.  
**In action against tenant sounding in tort.** 112: 38.  
**In forcible entry and detainer proceedings.** 112: 38.  
 — Subsequent actions. 112: 39.  
 — Subsequent ejectment. 112: 39.  
 — Subsequent suit for damages or trespass. 112: 40.  
**In suits in ejectment brought against tenant.** 112: 41.

**§ 43. — Admissibility and Effect Against Surety of Judgment Against Principal.**

**Review of opinions pro and con.** 132: 760, 761.  
**Judgment as prima facie evidence only.** 132: 761.  
**Contractual conclusiveness where sureties have agreed to be concluded.** 132: 762.  
**Sureties on bonds in special cases.** 132: 763.  
**When surety is a party to or has notice of proceedings.** 132: 768.  
**Collusion, fraud or mistake.** 132: 768.  
**Confession or default.** 132: 768.  
**Judgment in favor of principal.** 132: 768.

**§ 44. Property and Estates to Which Lien Attaches.**

**Real as distinguished from apparent interest.** 117: 777.  
**Personal property.** 117: 778.  
**Property partaking of nature of personality.** 117: 778.  
**Leasehold estates.** 117: 779.  
**Curtesy, dower and life estates.** 117: 779.  
**Remainders and reversions.** 117: 779.

**Tenancy in common.** 117: 780.  
**Partner and firm property.** 117: 780.  
**Equitable estates.** 117: 780.  
**Equity of redemption.** 117: 781.  
**Naked legal title.** 117: 782.  
**Title of one acting as mere conduit for transfer of title.** 117: 782.  
**Trust estates—Resulting trust.** 117: 783.  
 — Active trust. 117: 783.  
**Property purchased at judicial sale.** 117: 783.  
**After-acquired property.** 117: 784.  
**Property previously transferred.** 117: 784.  
 — By insane grantor. 117: 785.  
**Property sold under executory contract.** 117: 785, 786.  
**Property fraudulently conveyed.** 117: 786.  
**Location of property—Judgment of state court.** 117: 787.  
 — Judgment of federal court. 117: 788.  
 — Division of county or state. 117: 789.

**§ 45. Foreign Judgments.**

**Based on personal service of process on nonresident.** 109: 256.  
**Full faith and credit.** 109: 256.  
**Divorce decrees.** 109: 254–283.

**§ 46. — Judgments of Courts of Foreign Countries.**

**Presumption respecting jurisdiction.** 94: 533.  
**Disproving jurisdiction.** 94: 534.  
 — As to property within territorial jurisdiction. 94: 535.  
 — As to person of defendant. 94: 535.  
**Conclusiveness—General rule.** 94: 538.  
 — American rule. 94: 539.  
 — Judgment of dismissal. 94: 542.  
 — As cause of action and as res adjudicata. 94: 543.  
**Refusal to enforce judgments of courts of nation refusing to enforce those of our courts.** 94: 544.  
**Refusal to enforce judgment based on cause of action not enforceable here.** 94: 545.  
**Must be final and enforceable where rendered.** 94: 546.  
**Does not merge cause of action on which based.** 94: 546.  
**Judgment against natural justice.** 94: 547.

Judgment founded on mistake or misapprehension of law. 94: 548.

Fraud avoids. 94: 549.

Effect on citizens of foreign countries or persons who voluntarily resort to its courts. 94: 550.

Judgments in rem—General rule. 94: 550.

— Attachment and garnishment. 94: 552.

— Divorce decrees. 94: 553.

— Bankruptcy and insolvency proceedings. 94: 555.

— Probate decrees. 94: 557.

#### § 47. — Judgments of Courts of Sister States.

Are not foreign judgments. 103: 304.

Courts whose judgments are within the rule. 103: 306.

Character of proceedings or mode of conducting them. 103: 307.

Mode of obtaining jurisdiction over parties. 103: 307.

Inquiries concerning jurisdiction which are open. 103: 307.

Overcoming presumption of jurisdiction. 103: 309.

— When defendant was not subject to process of court. 103: 310.

— When defendant had left the state. 103: 311.

— Nonresidents found within the state. 103: 311.

— Constructive service to continue jurisdiction. 103: 311.

— Judgment under joint debtor acts. 103: 311.

Distinguished from domestic judgments  
— Mode of enforcement. 103: 312.

— Lien. 103: 312.

— Marshaling assets. 103: 312.

— Creditors' suits. 103: 312.

— Avoiding for fraud. 103: 313.

— Where judgment is for enforcement of penal or criminal laws. 103: 316.

— Restrictions by laws of state of rendition. 103: 318.

Assimilation to domestic judgments. 103: 319.

— As res adjudicata. 103: 319.

— As merger of cause of action. 103: 321.

— As to jurisdictional presumptions. 103: 322.

— As to effect of error or irregularity. 103: 323.

— For purpose of pleading. 103: 323.

— Effect of an appeal. 103: 323.

— Actions upon. 103: 324.

— Default or confession. 103: 324.

— Against corporations. 103: 326.

— Divorce decrees. 103: 328.

#### § 48. Assignment of Judgment.

Assignability of judgment. 78: 47.

Implied warranty. 78: 48.

Rights passing to assignee. 78: 49.

Good faith. 78: 51.

Equities and setoffs. 78: 53.

#### § 49. Vacating Satisfaction.

Vacating satisfaction on failure of title to property sold under execution. 134: 35-37.

#### § 50. Renewal.

Renewal of judgments. 133: 61.

#### § 51. Enforcement and Revival.

Time to prosecute scire facias. 133: 61, 62.

Denial of judgment on information and belief. 133: 119.

Revival of satisfied judgment on failure of title to property sold under it. 134: 36, 37.

#### § 52. — Dormant and Stale Judgments.

Historical review of remedies on stale judgments. 133: 61.

Revivor of dormant judgment. 133: 61.

Scire facias on dormant judgments. 133: 61, 62.

#### § 53. — Time Limit on Enforcement of Judgment.

Historical suggestions. 133: 61.

Alabama to Indiana. 133: 64.

Iowa to Kentucky. 133: 65.

Louisiana to Ohio. 133: 66-68.

Oklahoma to Wisconsin. 133: 69, 70.

Effect of statute of limitations on right to execution. 133: 70.

When time begins to run. 133: 72.

Docketing justices' judgments. 133: 75.

Circumstances tolling the statute. 133: 76.

Suspension and revival of statute of limitations in actions on. 133: 76.

**§ 54. — Setoff of Judgment Against Judgment.**

Jurisdiction to order—Courts of equity. 109: 137.

— Courts of law. 109: 139.

Form of proceedings. 109: 139.

Discretion of court. 109: 140.

Judgments of different courts. 109: 141.

Character of cause of action out of which judgment arose. 109: 142.

Time when respective judgments were rendered. 109: 142.

For or against whom judgment may be set off. 109: 143.

— Estate of decedent. 109: 144.

— Diversity of parties. 109: 144, 145.

Interests of third parties not prejudiced by setoff—Costs. 109: 146.

— Lien of attorneys. 109: 146.

— Assignees. 109: 147.

Necessity that judgment be final and enforceable—Must be final in form. 109: 149.

— Pendency of appeal. 109: 149.

— Effect of suspension of right to enforce. 109: 149.

Effect of exemption laws. 109: 150.

Of infant's lands. See Infants, § 8.

Rights of mortgagee on judicial sale of property. See Mortgages, § 14.

Foreclosure sale of mortgaged land. See Mortgages, §§ 18–22.

Right of purchaser at invalid sale to subrogation. See Subrogation, § 4.

Recovery of money paid at void tax sale. See Taxation, § 18.

Trustee's sale. See Trusts, § 13.

**§ 1. In General.**

Defined. 135: 918.

Status of purchasers at. 134: 37.

Rights of purchaser on failure of title. 134: 37–40.

**§ 2. Validity of Sale Under Satisfied Judgment.**

General review of previous notes. 137: 1091.

Under judgment satisfied of record. 137: 1092.

Under judgment not satisfied of record. 137: 1094–1098.

Where sale more than satisfies judgment. 137: 1098.

Under satisfied judgment, for interest on the judgment. 137: 1099.

Under satisfied judgment, for sheriff's fees on the execution. 137: 1099.

**§ 3. Persons Incapacitated from Purchasing.**

Sheriff's constables, commissioners and other officers authorized to make sales. 136: 789–793.

Executors and administrators. 136: 794–802.

Guardians. 136: 802–804.

Judges. 136: 805.

Trustees. 136: 805–809.

Mortgagees. 136: 810.

Pledgees. 136: 811.

Assignees for creditors. 136: 812.

Attorneys. 136: 813–816.

Cotenants and others jointly interested. 136: 817.

Husbands and wives. 136: 817.

Parties to the action or proceeding. 136: 818.

**§ 4. Adjournment.**

Authority to adjourn sale. 97: 653.

Grounds for adjournment. 97: 656.

Duty and liability of officer. 97: 658.

Notice and advertisement. 97: 658.

Officer's return of adjournment. 97: 660.

**JUDICIAL NOTICE.**

In civil cases. See Evidence, § 1.

**JUDICIAL SALES.**

IN GENERAL, § 1.

VALIDITY OF SALE UNDER SATISFIED JUDGMENT, § 2.

PERSONS INCAPACITATED FROM PURCHASING, § 3.

ADJOURNMENT, § 4.

CONFIRMATION, § 5.

ORDER, CONFIRMING, § 6.

OPENING FOR ADVANCED BIDS, § 7.

OBJECTION TO TITLE BY PURCHASER, § 8.

Sheriff's receipt, memorandum or return as color of title. See Adverse Possession, § 10.

Summary sale of impounded animals. See Animals, § 6.

Assignee's sale. See Assignments for Benefit of Creditors, § 3.

Auction sales. See Auctions and Auctioneers, §§ 4, 6.

Filing of return. See Courts, § 8.

Commissioner's sales. See Equity, § 9.

Execution sales. See Execution, §§ 6–13.

Sales by executors and administrators. See Executors and Administrators, §§ 20–22.

Applicability of statute of frauds to. See Frauds, Statute of, § 8.

Guardian's sales. See Guardian and Ward, § 13.

Validity. 97: 660.

Effect. 97: 661.

### § 5. Confirmation.

Effect of. 52: 177.

As establishing terms of sale. 52: 177.

Relief from—For defects of title. 52: 177.

— For misrepresentation. 52: 178.

### § 6. Order Confirming.

Conclusiveness. 29: 495.

Irregularities cured by. 29: 495.

Collateral attack upon. 29: 497.

Relation back to date of sale. 29: 497.

Binds purchaser. 29: 497.

Does not validate void sale. 29: 498.

### § 7. Opening for Advanced Bids.

English chancery practice. 113: 147.

Courts adopting of English practice. 113: 148.

Courts rejecting of English practice. 113: 150.

### § 8. Objection to Title by Purchaser.

When caveat emptor is inflexible. 135: 917.

Right of bona fide purchaser. 135: 921.

Fraud or mistake. 135: 921.

Where only interest of supposed owner is sold. 135: 921.

Where terms of sale do not provide that property is subject to liens. 135: 922.

Marketable title defined. 135: 922.

Time to make objection. 135: 922.

Mode of making objection. 135: 924.

Summary of law on the subject. 135: 926.

## JURISDICTION.

See Courts.

To enforce quarantine laws. See Animals, § 8.

Over citizens of another state or country. See Courts, § 1.

To review election and qualification of legislators. See Courts, § 2.

Dependent on amount in controversy. See Courts, § 3.

Evidence aliunde to show. See Courts, § 4.

Concurrent and conflicting. See Courts, § 5.

Of courts of equity. See Equity, §§ 1-4.

## JURY.

POWER OF LEGISLATURE TO ABRIDGE RIGHT TO JURY TRIAL, § 1.

QUALIFICATIONS, § 2.

BIAS OR INTEREST DISQUALIFYING JUROR, § 3.

RIGHT TO EXAMINE JUROR TO DETERMINE WHETHER TO EXERCISE PEREMPTORY CHALLENGE, § 4.

REJECTING OR EXCUSING JUROR WITHOUT CHALLENGE, § 5.

DISCHARGE OF ACCEPTED JUROR FOR INCAPACITY OR IMPROPRIETY, § 6.

WITHDRAWAL OF JUROR, § 7.

Conduct and deliberations of jury in criminal cases. See Criminal Law, § 54.

Misconduct of jury as ground for new trial. See Criminal Law, §§ 58-60.

Grand jury. See Grand Jury.

Mandamus to compel grant of jury trial. See Mandamus, § 6.

Effect of separation of jury. See Trial, § 9.

Right to jury trial in prosecution for vagrancy. See Vagrancy, § 5.

### § 1. Power of Legislature to Abridge Right to Jury Trial.

Reasonable regulations. 98: 538.

Requiring payment or deposit of fees. 98: 539.

Requirement of bond or recognizance. 98: 540.

Requirement of oath or affidavit of defense. 98: 543.

Demand of trial by jury. 98: 544.

### § 2. Qualifications.

Who are related by affinity. 79: 200-205.

### § 3. Bias or Interest Disqualifying Juror.

Right to unbiased jury. 9: 744.

Kinds of bias. 9: 745.

Bias against business in which party is engaged. 9: 747.

Prejudice against particular class of cases. 9: 747.

Prejudice against crimes. 9: 747.

Friendly or unfriendly feeling. 9: 748.

Interest in subject matter. 9: 748.

Interest need not be direct. 9: 748.

Interest in question at issue. 9: 749.

Interest as member of corporation. 9: 749.

Interest as citizen of city. 9: 750.

Statutes removing disqualification. 9: 752.

Relationship to parties. 9: 753.

— By affinity. 9: 754.

— To party interested in result. 9: 755.

Business association. 9: 756.

— Servants and sureties. 9: 756.

Partners. 9: 757.

Social relations and membership in lodges. 9: 757.

Religious affiliations. 9: 758.

Membership in organization formed to suppress crime. 9: 759.

**§ 4. Right to Examine Juror to Determine Whether to Exercise Peremptory Challenge.**

In criminal cases. 109: 564.

In civil actions. 109: 566.

Extent and scope of examination. 109: 566.

— In criminal cases. 109: 567.

— In civil actions. 109: 567.

**§ 5. Rejecting or Excusing Juror Without Challenge.**

Discretion of court. 1: 519.

Grounds—Conscientious scruples. 1: 520.

— Formal opinion or bias. 1: 520.

— Sickness, intoxication or ignorance. 1: 521.

— Miscellaneous. 1: 522.

**§ 6. Discharge of Accepted Juror for Incapacity or Impropriety.**

In general. 1: 522.

Objections existing at time of acceptance. 1: 523.

Objections arising after acceptance. 1: 524.

**§ 7. Withdrawal of Juror.**

Grounds for. 78: 782.

Effect of. 78: 781.

**JUSTICES OF THE PEACE.**

Authority to punish contempt. See Contempt, § 4.

**§ 1. In General.**

Liability of sureties on official bonds. 91: 574-577.

Dockets of justices of the peace. 87: 672.

Effect of filing transcript of judgment in court of record on statute of limitations. 133: 75.

Collateral attack on forged or altered entries of judgment. 80: 482-484.

**§ 2. Personal Liability for Official Acts.**

In general. 137: 49.

Ministerial acts. 137: 52.

Malicious or corrupt acts. 137: 52.

Acts without, or in excess of, jurisdiction. 137: 53.

**JUSTIFIABLE ASSAULT.**

To protect wife's chastity. See Assault and Battery, § 1.

**JUSTIFICATION.**

See Defenses.

For libel or slander. See Libel and Slander, §§ 13-15.

**JUVENILE COURTS.**

See Reformatories, § 1.

**KENO.**

As gambling game. See Gaming, §§ 4, 5.

**KIDNAPING.**

Exemption of kidnaped persons from civil process. See Process, § 4.

**§ 1. General Note.**

What constitutes—At common law. 4: 447.

— Under statutes. 4: 448.

Indictment. 4: 449.

Punishment. 4: 450.

**KILLING DOGS.**

Justification for. See Animals, § 2.

As invasion of private property and deprivation of due process of law. See Animals, § 6.

**KLEPTOMANIA.**

As defense for crime. See Criminal Law, § 10.

**KNOWLEDGE OF FACTS.**

See Notice.

Complete knowledge of facts necessary to valid accord. See Accord and Satisfaction, § 1.

**LABELS.**

As trademarks. See Trademarks and Trade Names, § 2.

**LABOR.**

As necessary of life. See Monopolies, § 1.

**LABORERS.**

Who are laborers entitled to exemptions. See Exemptions, § 3.

Who are laborers entitled to liens for wages. See Mechanics' Liens, § 2.

**LABOR LAWS.**

Regulating wages. See Constitutional Law, § 10.

**LABOR UNIONS.**

See Trade Unions.

**LACHES.**

Barring relief in equity. See Equity, §§ 7, 8.  
In applying for order for sale of property of decedents. See Executors and Administrators, § 22.

As bar to suit to reform writing. See Reformation of Instruments, § 6.

Of vendor as waiver of vendor's lien. See Vendor and Purchaser, § 9.

**LAKES.**

Acquisition of title to lakes by adverse possession. See Adverse Possession, § 1.

Navigable. See Navigable Waters.

Non-navigable. See Waters and Water-courses.

**LAND.**

See Property.

Contracts to purchase and convey. See Vendor and Purchaser, §§ 1-13.

**LANDLORD AND TENANT.**

CREATION OF RELATION, § 1.

CONDITION OF TITLE, § 2.

DUTY TO PUT TENANT IN POSSESSION, § 3.

POSSESSION BY TENANT, § 4.

ESTOPPEL OF TENANT—ESSENTIALS AND WAIVER, § 5.

— PERSONS ESTOPPED, § 6.

— WHO MAY ASSERT ESTOPPEL, § 7.

— IN WHAT ACTIONS ESTOPPEL MAY BE ASSERTED, § 8.

— ATTORNMENT TO THIRD PERSON, § 9.

— ACQUISITION OF TITLE BY TENANT, § 10.

COVENANTS FOR RENEWAL, § 11.

EFFECT OF RE-ENTRY CLAUSE IN LEASE, § 12.

FORFEITURE OF LEASE, § 13.

WAIVER OF FORFEITURE OF LEASE, § 14.

ASSIGNMENT OF LEASE, § 15.

SUBLETTING—WHAT CONSTITUTES, § 16.

— RIGHT OF TENANT TO SUBLET, § 17.

— COVENANTS AGAINST, § 18.

— RIGHTS, LIABILITIES AND REMEDIES OF PARTIES, § 19.

LIEN ON PROPERTY OF TENANT, § 20.

ABANDONMENT AND SURRENDER OF PREMISES BEFORE EXPIRATION OF LEASE—RIGHTS OF LANDLORD, § 21.

JUSTIFICATION FOR ABANDONMENT OF PREMISES, § 22.

WHAT CONSTITUTES HOLDING OVER, § 23.

HOLDING OVER AS EXERCISE OF OPTION TO EXTEND OR RENEW LEASE, § 24.

RIGHTS AND LIABILITIES ON DESTRUCTION OF LEASED BUILDING, § 25.

LANDLORD'S DUTY TO RESTORE DESTROYED OR INJURED BUILDING, § 26.

LIABILITIES OF LESSOR, § 27.

LIABILITY FOR LETTING DANGEROUS PREMISES, § 28.

LIABILITY OF LESSOR TO THIRD PERSONS, § 29.

LIABILITY OF LESSOR TO STRANGERS, § 30.

FARM LEASES, § 31.

CROPPERS, § 32.

RIGHT TO ESTOVERS, § 33.

Proceedings against unknown owners. See Absentees, § 2.

Holding over after expiration of lease as unlawful detainer. See Forcible Entry and Detainer, § 3.

Holding over after forfeiture of lease as unlawful detainer. See Forcible Entry and Detainer, § 3.

Parol lease for more than one year. See Frauds, Statute of, § 5.

Lease of homestead. See Homestead, §§ 6-9.

Enjoining breach of covenant in lease. See Injunction, § 7.

Duty of landlord and tenant of hotel to provide fire-escapes. See Innkeepers, § 2.

Conclusiveness on landlord of judgment against tenant. See Judgment, § 42.

Duty of life tenant not to renew leases for his own benefit. See Life Estates, § 3.

Liability of lessor railroad to persons other than lessee. See Railroads, § 6.

Reformation of leases. See Reformation of Instruments, § 1.

Options to purchase in leases. See Vendor and Purchaser, § 3.

Testamentary leases. See Wills, § 2.

**§ 1. Creation of Relation.**

By lease in general. 89: 66.

Validity of lease. 89: 67.

By operation of law. 89: 70.

Tenancy at will. 89: 71.

Tenancy by sufferance. 89: 71.

**§ 2. Condition of Title.**

At date of lease. 89: 71.

Want of title. 89: 71.

Title different from that supposed. 89: 72.

Invalidity of title. 89: 73.

Title in another. 89: 73.

— In the government. 89: 74.

Denial of title greater than necessary to support lease. 89: 75.

Termination of title. 89: 76.

— By sale or operation of law. 89: 77.

— By tax sale, execution sale or escheat. 89: 78, 79.

— Effect of continued payment of rent. 89: 78.

**§ 3. Duty to Put Tenant in Possession.**

General principles. 134: 916.

English rule of placing tenant in possession. 134: 917.

American rule merely giving tenant possession. 134: 920.

**§ 4. Possession by Tenant.**

Possession given by fraud. 89: 92.  
Where tenant does not take possession under lease. 89: 92.  
Possession acquired from landlord. 89: 93.  
Effect of possession at initiation of relation. 89: 94.  
— Effect of fraud or mistake. 89: 95.  
Surrender of possession necessary to relieve estoppel. 89: 96.  
— Tenant holding over. 89: 97.  
— Adverse possession. 89: 98.  
— Sufficiency of surrender. 89: 98.  
— Effect of surrender. 89: 98.  
Effect of eviction by paramount title. 89: 99.  
Effect of termination of relation. 89: 100.

**§ 5. Estoppel of Tenant—Essentials and Waiver.**

Introduction. 89: 64.  
Necessity for existence of relation. 89: 64.  
Necessity for previous admission of title in landlord or relation of tenant. 89: 66.  
Waiver of estoppel. 89: 114.  
Contravention of law on public policy relieves tenant. 89: 115.

**§ 6. — Persons Estopped.**

In general. 89: 106.  
Subtenants and assignees. 89: 106.  
Person obtaining possession fraudulently. 89: 107.  
Purchaser holding under contract. 89: 108.  
Heirs of tenant. 89: 108.  
Mortgage of tenant. 89: 108.  
Purchaser of fee from tenant. 89: 108.  
Tenant in common. 89: 109.  
Vendor who becomes tenant. 89: 109.  
Mortgagor who becomes tenant. 89: 110.  
Execution debtor. 89: 110.  
Wife of tenant. 89: 110.

**§ 7. — Who may Assert Estoppel.**

Landlord. 89: 110.  
Assignee of landlord. 89: 111.  
Grantee of landlord. 89: 111.  
Heir of landlord. 89: 111.  
Executors and administrators. 89: 112.  
Mortgagee of landlord. 89: 112.  
Purchaser at judicial sale. 89: 113.

**§ 8. — In What Actions Estoppel may be Asserted.**

General rule. 89: 113.  
Action for rent. 89: 113.  
Action for use and occupation. 89: 113.  
Ejectment. 89: 114.  
Unlawful detainer. 89: 114.  
Summary proceedings. 89: 114.

**§ 9. — Attornment to Third Person.**

When void. 89: 101.  
— Attornment to paramount title. 89: 102.  
— Mistake or fraud. 89: 103.  
Effect of void attornment. 89: 101.  
When valid—With landlord's consent. 89: 104.  
— To purchaser of landlord's title. 89: 104.  
— To purchaser at execution sale. 89: 104.  
— To purchaser at tax sale. 89: 105.  
— Effect of ejectment. 89: 105.

**§ 10. — Acquisition of Title by Tenant.**

Acquisition of adverse title—Right to acquire. 89: 79.  
— Right to assert. 89: 80.  
Acquisition of landlord's title. 89: 81.  
— By buying encumbrance. 89: 83.  
— By devise. 89: 83.  
— Title consistent with landlord's. 89: 83.  
Tax title. 89: 84.  
Adverse possession by tenant—In general. 89: 85.  
— Character of possession. 89: 86.  
— Necessity for surrender of possession before. 89: 87.  
— Disclaimer and notice. 89: 88, 90.  
— Ouster and disseizin of landlord. 89: 91.  
— When statute begins to run. 89: 91.

**§ 11. Covenants for Renewal.**

Validity and construction. 123: 460.  
Number of renewals. 123: 462.  
Perpetual renewals. 123: 462.  
By or against whom renewal is available. 123: 463.  
Execution of renewal. 123: 465.  
Remedies for breach. 123: 466.

- Specific performance. 123: 467.
- Action for damages. 123: 467.

## § 12. Effect of Re-entry Clause in Lease.

- Right of re-entry defined. 127: 85.
- Right based on conditional limitations or conditions subsequent. 127: 86.
- Who may enforce right. 127: 87.
- Necessity for notice to quit. 127: 88.
- Necessity for demand for rent. 127: 88.
- Effect of re-entry on covenant for rent. 127: 91.
- Remedies available to enforce re-entry. 127: 92.
- Right to use force. 127: 96.
- Right to use artifice or stratagem. 127: 98.

## § 13. Forfeiture of Lease.

- Forfeiture not favored by courts. 26: 911.
- Lessor may elect to forfeit. 26: 911.
- Lessor must elect by some positive act. 26: 912.
- Acts showing election to forfeit. 26: 912.
- Estoppel of tenant to set up forfeiture. 26: 913.

## § 14. Waiver of Forfeiture of Lease.

- Courts loath to enforce forfeitures. 47: 197.
- Acceptance of rent. 47: 198.
- After subletting in violation of lease. 47: 199.
- After assignment of lease. 47: 199.

## § 15. Assignment of Lease.

- Right to assign. 10: 557.
- Construction of stipulations against. 10: 557, 558.
- What constitutes. 10: 558.
- Assignment over by assignee. 10: 559.
- Assignment and sublease distinguished. 10: 560.
- Commencement and duration of assignee's liability. 10: 561.
- Rights of assignee. 10: 562.
- Rights of lessee after assignment. 10: 562, 563.
- Undertenant not liable to original lessor. 10: 564.
- Remedies of parties. 10: 564, 565.

## § 16. Subletting—What Constitutes.

- In general. 117: 97.
- Distinguished from assignment. 117: 97.

## § 17. — Right of Tenant to Sublet.

- When unrestrained by lease. 117: 91.
- When forbidden by statute. 117: 92.

## § 18. — Covenants Against.

- In general. 117: 92.
- Construction of covenant. 117: 93.
- Persons entitled to benefit of covenant. 117: 93.
- What constitutes breach, in general. 117: 93.
- Change in partners of lessee firm. 117: 94.
- Involuntary transfer of leasehold. 117: 94.
- Assignment of lease. 117: 95.
- Consent of lessor to subletting. 117: 95.
- Waiver of breach of covenant. 117: 96.

## § 19. — Rights, Liabilities and Remedies of Parties.

- As between subtenant and original landlord. 117: 99.
- Right of original lessee to surrender lease. 117: 99.
- Notice to subtenant of terms of original lease. 117: 100.
- Remedies of original lessor against his lessee. 117: 100.

## § 20. Lien on Property of Tenant.

- Common-law lien. 119: 122.
- Express contract—Creation. 119: 123.
- Nature of lien. 119: 123.
- Property subject to lien. 119: 124.
- Property of third person. 119: 124.
- After-acquired property. 119: 124.
- Exempt property. 119: 124.
- Statutory lien. 119: 126.
- Property subject to lien. 119: 127.
- Recording. 119: 127.
- Debts for which lien may be claimed. 119: 129.



**§ 21. Abandonment and Surrender of Premises Before Expiration of Lease—Rights of Landlord.**

Surrender of premises in general. 114: 717.  
 Resuming possession by landlord. 114: 718.  
 Repair and care of property. 114: 718.  
 Receiving and retaining keys. 114: 719.  
 Reletting premises. 114: 719.

**§ 22. Justification for Abandonment of Premises.**

Fundamental principles governing right. 38: 476.  
 No implied warranty that premises are suitable. 38: 477.  
 Duty to inspect premises before leasing. 38: 478.  
 Exception in case of furnished house. 38: 479.  
 Fraud of lessor. 38: 480.  
 Express stipulations and their effect. 38: 481.  
 Failure to put tenant in possession. 38: 481.  
 Circumstances arising after commencement of tenancy. 38: 482.  
 Restoration of destroyed or injured building. 38: 482.  
 — Landlord's duty at common law and under statutes. 38: 482.  
 — Under stipulations in lease. 38: 483.  
 — Where only part of building is destroyed. 38: 483.  
 Acts of third persons justifying abandonment. 38: 484.  
 Circumstances for which lessor is not responsible. 38: 484.  
 Lessor's acts justifying abandonment. 38: 485.  
 Intention to remove tenant—A material element of eviction. 38: 486.  
 — Question of law or fact. 38: 486.  
 — Inferred from acts of ownership. 38: 486.  
 — Inferred from acts materially changing premises. 38: 488.  
 — Inferred from acts affecting tenantable qualities of premises. 38: 488.  
 Nuisance on premises as eviction. 38: 490.  
 Partial eviction by landlord. 38: 491.

**§ 23. What Constitutes Holding Over.**

Failure to move because of illness. 70: 532, 533.  
 Intention of tenant immaterial. 70: 534.  
 Effect of notice to landlord. 70: 535.  
 Leaving property on premises. 70: 534, 535.  
 Rebuttal of presumption arising from. 70: 537.

**§ 24. Holding Over as Exercise of Option to Renew or Extend Lease.**

Holding over. 112: 751.  
 Holding over with notice of intention to vacate. 112: 754.

**§ 25. Rights and Liabilities on Destruction of Leased Building.**

Duty to rebuild. 61: 566.  
 Liability for rent. 61: 567.  
 Abatement or apportionment of rent. 61: 570.  
 Lease of apartments. 61: 571.

**§ 26. Landlord's Duty to Restore Destroyed or Injured Building.**

At common law. 38: 482.  
 Under statutes. 38: 482.  
 Under stipulations in lease. 38: 483.  
 Where only part of building is destroyed. 38: 483.

**§ 27. Liabilities of Lessor.**

Liability of landlord who reserves control of certain portions of building such as halls and stairways of apartment house. 111: 474, 475.

**§ 28. Liability for Letting Dangerous Premises.**

Application of doctrine of caveat emptor. 66: 785, 788.  
 Want of repair. 66: 785.  
 Duty to discover dangers and defects. 66: 785.  
 Liability to third persons. 66: 786.  
 Obvious defects or dangers. 66: 786, 787.  
 Basis of landlord's liability. 66: 787.  
 Premises affected with contagious disease. 66: 787.  
 Knowledge of dangers and defects. 66: 788.

**§ 29. Liability of Lessor to Third Persons.**

Acts of lessee. 92: 502.

Injuries from defective or noxious premises — General rule. 92: 502.

— Arising from failure to repair. 92: 503.

— — Where lessor covenants to repair. 92: 504.

— To third persons generally. 92: 508.

To licensees or guests of tenant. 92: 509.

— Where lessor conceals defect. 92: 512.

— Where lessor negligently leases defective premises. 92: 512.

— Where lessee creates nuisance or danger. 92: 519.

— Improper use of premises by lessee. 92: 519.

— Where lessor retains control of portion of premises. 92: 520.

**§ 30. Liability of Lessor to Strangers.**

In general. 92: 524.

For nuisance created by lessee. 92: 524.

For misuse of premises by lessee. 92: 524.

Where nuisance exists at time of lease. 92: 526.

Where ordinary use of premises creates nuisance. 92: 527.

Where premises are leased for noxious purposes. 92: 528.

Where lessor retains control of portion of premises. 92: 529.

Where lessor assents to or licenses injurious act. 92: 529.

Renewal of lease equivalent to original letting. 92: 530.

Liability of one who acquires property subject to lease with a nuisance upon it. 92: 532.

Actual knowledge of defect existing at time of lease not essential. 92: 532.

Instances of liability to owners or occupant of adjoining premises. 92: 533.

Instances of liability to persons on highways. 92: 536.

Statutory provisions. 92: 546.

**§ 31. Farm Leases.**

Right of landlord to reserve title to, or a lien upon, the crops to be

raised by the tenant. 14: 166-168.

**§ 32. Croppers.**

Who are. 98: 953.

Distinguished from tenant. 98: 953.

Cropping contracts. 98: 955.

Title to, or interest in, crop. 98: 956.

Rights and remedies. 98: 957.

Cotenancy in crop. 98: 959-962.

**§ 33. Right to Estovers.**

Nature of right. 106: 306.

Common of estovers. 106: 306.

Custom and circumstances as affecting right. 106: 306.

Time of cutting timber and making repairs. 106: 307.

Abundance or scarcity of timber. 106: 307.

Character of timber. 106: 307.

Use and purpose for which timber is cut. 106: 308.

Place where timber is cut or used. 106: 309.

Who may cut or use. 106: 310.

Remedies of parties. 106: 311.

**LANDMARKS.**

Appropriation and preservation of, for the people. See Eminent Domain, § 4.

**LAND PARTNERSHIPS.**

See Partnership, § 7.

**LANGUAGE.**

Judicial notice of. See Evidence, § 1.

**LARCENY.**

GENERAL NOTE, § 1.

PROPERTY SUBJECT TO LARCENY, § 2.

OWNERSHIP OF PROPERTY, § 3.

TRESPASS, § 4.

TAKING, § 5.

CONSENT OF OWNER, § 6.

INTENT, § 7.

INDICTMENT, § 8.

CIVIL ACTION FOR GOODS STOLEN, § 9.

See Burglary; Robbery, §§ 1-3.

Kleptomania as defense. See Criminal Law, § 8.

Evidence of possession of stolen property. See Criminal Law, § 28.

Distinguished from embezzlement. See Embezzlement, § 1.

Of lost goods. See Finding Lost Goods, § 1.

Liability of pledgee for theft of pledge. See Pledges, § 3.

Of United States mail. See Postoffices, § 2.

Title acquired by purchaser of stolen property. See Sales, § 6.

Liability of warehouseman for loss by. See Warehousemen, § 6.

**§ 1. General Note.**

Definition. 88: 561.  
Taking. 88: 561.  
Trespass. 88: 566.  
Asportation. 88: 584.  
Personal property. 88: 586.  
Ownership. 88: 595.  
Consent of owner. 88: 597.  
Intent. 88: 600.

**§ 2. Property Subject to Larceny.**

Personal property generally. 88: 586.  
Animals. 88: 587.  
Dogs. 88: 588; 67: 297.  
Property annexed to freehold. 88: 589.  
Property savoring of realty. 88: 590.  
Lost property. 88: 591; 129: 411.  
Value of property. 88: 594.

**§ 3. Ownership of Property.**

Necessity. 88: 595.  
Sufficiency. 88: 595.  
One's own property. 88: 596.  
Property of husband or wife. 88: 597.

**§ 4. Trespass.**

General possession of owner. 88: 566.  
Lost goods. 88: 567.  
Obtaining possession—Lawfully. 88: 568.  
— By fraud or false representation. 88: 568.  
— Where title to property passes. 88: 571.  
— Cheating at cards. 88: 573.  
— Fraudulently inducing sale. 88: 573.  
— False personation. 88: 574.  
Possession and custody—Distinguished. 88: 575.  
— Bailment. 88: 576.  
— Delivery of money to have it changed. 88: 578.  
— Possession as carrier. 88: 579.  
— Hiring or borrowing. 88: 580.  
— Possession by servants or agents. 88: 580.  
— Effect of statutes. 88: 583.

**§ 5. Taking.**

In general. 88: 561.  
By force. 88: 562.  
By fear. 88: 563.  
Open or secret. 88: 563.  
Through innocent person. 88: 564.  
Possession by thief. 88: 565.

**§ 6. Consent of Owner.**

In general. 88: 597.

Consent to trap thief. 88: 598.  
Induced by fear or fraud. 88: 599.  
Property delivered by mistake. 88: 599.

**§ 7. Intent.**

Necessity. 88: 600.  
Time of formation. 88: 601.  
Of finder of lost property. 88: 603.  
Claim of right. 88: 604.  
To convert property. 88: 605.  
To deprive owner of property. 88: 606.  
To claim reward. 88: 606.  
To return or account for property. 88: 607.  
To use and abandon property. 88: 607.  
To injure or destroy property. 88: 608.

**§ 8. Indictment.**

Description of stolen property. 22: 154.  
Description of money. 10: 174.

**§ 9. Civil Action for Goods Stolen.**

Right to sue in assumpsit for value of stolen goods. 134: 195.

**LAST DAY.**

Exclusion of last day in computing time. See Time, § 1.

**LATENT DEFECTS.**

Master's liability for latent defects in machinery or premises. See Master and Servant, § 11.

**LATERAL SUPPORT.**

Right of land owner to support from adjoining land. See Adjoining Land Owners, § 1.  
Liability of abutting owner for removal of lateral support from highway. See Highways, § 4.  
Interference with, by railroad. See Railroads, § 11.

**LAW.**

Right to read law to jury. See Trial, § 2.

**LAWFUL WEDLOCK.**

Proof of illegitimacy of child born in lawful wedlock. See Bastards, § 4.

**LAW LIBRARIES.**

Taxation for support of. See Taxation, § 3.

**LAW OF THE ROAD.**

Duties of drivers and pedestrians using highways. See Highways, § 9.

**LAY DAYS.**

What are within meaning of law of demurrage. See Shipping, § 4.

**LEAKAGE.**

Liability of warehouseman for loss by. See Warehousemen, § 6.

**LEASES.**

See Landlord and Tenant, §§ 11-24.  
Distinguished from conditional sales. See Sales, § 20.  
As wills. See Wills, § 2.

**LEAVE OF COURT.**

To intervene in civil actions. See Parties, § 3.  
To sue receiver. See Receivers, § 7.

**LEGACIES.**

General, special, vested and contingent. See Wills, §§ 45-48.  
Ademption of. See Wills, §§ 50-52.

**LEGAL SUBROGATION.**

See Subrogation, § 2.

**LEGATEES.**

Right to contest will. See Wills, § 22.

**LEGISLATION.**

Validity of contracts to procure. See Contracts, § 7.

**LEGISLATIVE APPORTIONMENT.**

As legislative function. See Constitutional Law, § 3.

**LEGISLATORS.**

Exemption from civil process. See Process, § 4.

**LEGISLATURE.**

Powers of. See Constitutional Law.  
Power to compel attendance of witnesses. See States, § 2.  
Legislative apportionment. See States, §§ 3, 4.  
Power of courts, to review proceedings to determine election and qualification of legislators. See Courts, § 2.

**LESSENING DAMAGES.**

Duty of injured person to lessen damages. See Damages, § 11.

**LESSOR RAILROAD.**

Liability in transportation of freight. See Carriers, § 6.  
Liability for acts of lessee in carrying passengers. See Carriers, § 42.  
Liability to persons other than lessee. See Railroads, § 6.

**LETTERS.**

Offense of opening or stealing. See Post-offices, §§ 1, 2.  
Violation of postal laws. See Postoffices, § 3.  
As wills. See Wills, § 2.

**LETTERS TESTAMENTARY.**

Right of nonresidents to. See Executors and Administrators, § 1.

**LEVEES.**

Taxation for construction of. See Taxation, § 3.

**LEWDNESS.**

As vagrancy. See Vagrancy, § 2.  
As vagrancy. 137: 947.

**LIABILITY OF STOCKHOLDERS.**

Preferred stockholders. See Corporations, § 19.

**LIBEL AND SLANDER.**

LIABILITY OF CORPORATIONS, § 1.  
WORDS LIBELOUS PER SE, § 2.  
BLACKLISTING, § 3.  
LIBELS IN NEWSPAPERS AND PERIODICALS, § 4.  
IN THE COURSE OF JUDICIAL PROCEEDINGS, § 5.  
IN CIVIL ACTIONS, § 6.  
IN CRIMINAL PROSECUTION, § 7.  
SLANDER IN JUDICIAL PROCEEDINGS, § 8.  
LIBEL OR SLANDER OF A CLASS OR NUMBER OF PERSONS, § 9.  
PUBLICATION OF LIBEL, § 10.  
MITIGATION, § 11.  
PARTIAL JUSTIFICATION, § 12.  
PLEA OF JUSTIFICATION, § 13.  
EVIDENCE OF JUSTIFICATION, § 14.  
DEFENSES NOT AFFIRMING TRUTH OF DEFAMATORY MATTER AND NOT AMOUNTING TO JUSTIFICATION, § 15.  
WHAT STATEMENTS ARE PRIVILEGED, § 16.  
— COMMUNICATIONS RELATIVE TO GOVERNMENTAL AFFAIRS, § 17.  
— STATEMENTS MADE IN JUDICIAL PROCEEDINGS, § 18.  
— STATEMENTS CONCERNING OFFICERS AND CANDIDATES, § 19.  
— NEWSPAPER OR OTHER ACCOUNTS OF GOVERNMENTAL AFFAIRS, § 20.  
— STATEMENTS RELATIVE TO MATTERS OF PUBLIC INTEREST, § 21.  
— STATEMENTS RELATIVE TO PERSONAL OR BUSINESS AFFAIRS, § 22.  
— STATEMENTS AFFECTING MORAL OR SOCIAL DUTIES, § 23.  
EVIDENCE, § 24.  
PROVINCE OF JURY, § 25.  
Defamation of association as ground for expulsion of member. See Associations, § 2.  
Enjoining defamatory publications. See Injunction, § 6.  
Repetition of slander as proximate cause of injury. See Negligence, § 10.

**§ 1. Liability of Corporations.**

General liability. 115: 721.  
 Acts of agents. 115: 723.  
 Criminal liability. 115: 724.  
 Measure of damages. 115: 725.  
 Liability for slander. 115: 726.

**§ 2. Words Libelous Per Se.**

General rule. 116: 804.  
 Libel and slander distinguished. 116: 804.  
 Damage must be proximate result of words used. 116: 805.  
 Words must have relation to plaintiff. 116: 806.  
 Construing the language used. 116: 807.  
 — Where it merely asserts suspicion or opinion. 116: 808.  
 — Where used ironically, inferentially, conditionally or disjunctively. 116: 809.  
 Tending to disgrace, degrade, ostracize or subject person to contempt. 116: 809.  
 Imputing commission of crime. 116: 813.  
 Imputing criminal intent or disposition. 116: 814.  
 Imputing political corruption or unfitness for office. 116: 814.  
 Imputing want of knowledge, skill or integrity in business or profession. 116: 816.  
 — Where business is unlawful or conducted without a license. 116: 816.  
 — Distinction between statements concerning a person individually and in business capacity. 116: 817.  
 Imputing want of credit, insolvency or failure to pay debts. 116: 817.

**§ 3. Blacklisting.**

Right of employers to maintain list of discharged employees. 79: 392.

**§ 4. Libels in Newspapers and Periodicals.**

Persons liable—Proprietor. 15: 334.  
 — Editor, printer and distributor. 15: 336.  
 — Contribution between. 15: 336.  
 Proof of publication. 15: 337.  
 Malice. 15: 337.  
 Damages. 15: 339.  
 — Exemplary. 15: 341.

Freedom of the press. 15: 344.  
 Justification or grounds of defense. 15: 345.  
 Privileged communications. 15: 356.

**§ 5. In the Course of Judicial Proceedings.**

English rule. 123: 632.  
 Protection of relevancy. 123: 633.  
 Liability for irrelevancy. 123: 635.  
 Malice. 123: 640.  
 What proceedings are judicial. 123: 642–646.  
 Disbarment proceedings. 123: 646.  
 Military proceedings. 123: 647.  
 Interstate commerce commission proceedings. 123: 647.  
 Extradition proceedings. 123: 647.  
 Persons protected, parties, attorneys, witnesses, jurors and judges. 123: 647.  
 Persons against whom privilege may be invoked. 123: 651.  
 Louisiana rule. 123: 652.

**§ 6. In Civil Actions.**

Truth of charge as defense. 91: 288.

**§ 7. In Criminal Prosecution.**

Truth of charge as defense. 91: 290.

**§ 8. Slander in Judicial Proceedings.**

Words used by counsel. 6: 825.  
 Statements made by witnesses. 6: 825–828.

**§ 9. Libel or Slander of a Class or Number of Persons.**

In general. 70: 754.  
 Must refer to ascertainable person. 70: 754.  
 Occupants of same institution. 70: 755.  
 Averments essential to recovery. 70: 755.  
 Rights of person included in class. 70: 756.  
 In one publication. 70: 756, 757.

**§ 10. Publication of Libel.**

Publication of libel by letter written to plaintiff. 13: 627.

**§ 11. Mitigation.**

Right of defendant to prove in mitigation that he did not originate

the defamatory charge. 55: 611-613.

## § 12. Partial Justification.

Where defendant used part only of defamatory words. 91: 291.

Where defendant seeks to establish truth of only part of words used. 91: 291.

## § 13. Plea of Justification.

General issue. 91: 292.

Must be as broad as charge. 91: 293.

Justifying by pleading different or lesser crimes or acts. 91: 294.

Must not be conditional or contingent. 91: 295.

Must respond to innuendo. 91: 295.

Form of plea—General rule. 91: 296.

— When charge is specific in its details. 91: 297.

— When charge involves mere opinion or conclusion. 91: 298.

— Illustrations of justification for charge of crime. 91: 299.

— Partial justification. 91: 300.

— Must confess use of defamatory words justified. 91: 300.

Joining justification with inconsistent pleas. 91: 301.

As aggravating damages or as evidence of malice. 91: 302.

Withdrawal of plea. 91: 306.

## § 14. Evidence of Justification.

Burden of proof. 91: 306.

Degree or amount of proof required—In civil cases. 91: 306.

— In criminal prosecutions. 91: 308.

Evidence admissible and necessary to justify a charge of crime. 91: 308.

## § 15. Defenses not Affirming Truth of Defamatory Matter and not Amounting to Justification.

Want of injury to plaintiff. 91: 287.

Existence of prior reports to same effect. 91: 287.

Belief in truth of defamatory charge. 91: 288.

Apology or retraction. 91: 288.

Defendant's construction of words used. 91: 288.

Motive or intent of defendant. 91: 288.

## § 16. What Statements are Privileged.

General definition. 104: 112.

Absolute and conditional or qualified privilege. 104: 113.

Distinction between privilege, criticism and justification. 104: 113.

Necessity that statement be free from malice. 104: 115.

Who determines whether statement is privileged. 104: 117.

Scope of privilege. 104: 117.

Waiver of privilege. 104: 117.

General effect of privilege. 104: 118.

Effect where statement is willful falsehood. 104: 119.

## § 17. — Communications Relative to Governmental Affairs.

Members of judiciary. 104: 119.

Members of legislative department. 104: 120.

Members of executive department. 104: 120.

Petitions or complaints to executive officers. 104: 122.

## § 18. — Statements Made in Judicial Proceedings.

In general. 104: 122.

Ex parte applications. 104: 122.

Motions or affidavits. 104: 122.

Pleadings. 104: 125.

Briefs. 104: 125.

## § 19. — Statements Concerning Officers and Candidates.

Public officers. 104: 133.

Candidates for office. 104: 134.

## § 20. — Newspaper or Other Accounts of Governmental Affairs.

Judicial proceedings. 104: 128.

— Pleadings. 104: 128.

— Ex parte or criminal proceedings. 104: 129.

— Court proceedings. 104: 130.

Fire department records. 104: 132.

Police department records. 104: 132.

Legislative proceedings. 104: 132.

Extent of right to use headlines. 104: 133.

## § 21. — Statements Relative to Matters of Public Interest.

By persons, individually or collectively. 104: 137.

By newspapers or periodicals. 104: 137.

— Right to chronicle current events. 104: 138.

— Right to comment on matters of public concern. 104: 139.

**§ 22. — Statements Relative to Personal or Business Affairs.**

Matters in self-defense. 104: 143.

Voluntary information. 104: 144.

Information in response to request. 104: 145.

Mercantile agencies. 104: 145.

Statements in trade or class journals. 104: 146.

Advertisements. 104: 146.

Statements made at instance of plaintiff. 104: 147.

To protect or enhance business. 104: 147.

Business letters to agents or employees. 104: 148.

Notice of patent or copyright infringement. 104: 149.

Notice of discharge of servant. 104: 149.

Cards or lists showing cause of discharge of servant. 104: 150.

List of bad debtors. 104: 150.

**§ 23. — Statements Affecting Moral or Social Duties.**

In general. 104: 140.

Between relatives concerning affianced persons. 104: 140.

Concerning fellow church members. 104: 141.

Concerning pastors or church officers. 104: 141.

At church conferences, trials or investigations. 104: 142.

False statements in baptismal register. 104: 142.

Concerning fellow members of lodges or societies. 104: 143.

**§ 24. Evidence.**

Admissible to support innuendo. 53: 698-701.

**§ 25. Province of Jury.**

Province of court and jury in prosecutions for libel. 13: 625-627.

Jury as judges of law and fact. 42: 290.

**LIBERTY OF THE PRESS.**

Infringement of. See Criminal Law, § 1.

**LICENSES.**

PERSONS AND OCCUPATIONS SUBJECT TO LICENSE, § 1.

IMPOSITION BY MUNICIPAL CORPORATIONS, § 2.

AMOUNT AND REASONABLENESS OF TAX, § 3.

UNIFORMITY AND EQUALITY, § 4.

DOUBLE TAXATION, § 5.

TO USE LAND—NATURE AND REVOCABILITY, § 6.

Power of legislature to exempt discharged soldiers from license tax. See Army and Navy, § 1.

Marriage without license as bigamy. See Bigamy, § 1.

Which state may exact on commerce. See Commerce, § 1.

License of automobiles. See Highways, § 10.

Mandamus to compel grant or refusal of. See Mandamus, § 4.

Of playhouses. See Theaters and Shows, § 1.

**§ 1. Persons and Occupation Subject to License.**

In general. 129: 269.

Oil producers and dealers. 129: 270.

Mechanical trades. 129: 270.

Mercantile pursuits. 129: 274.

Auctioneers, agents, brokers and money lenders. 129: 280.

Innkeepers, liverymen and garage owners. 129: 283.

Corporations doing business within the state. 129: 287.

Professions—Lawyers. 129: 291.

— Doctors. 129: 293.

— Dentists. 129: 294.

Druggists. 129: 294.

**§ 2. Imposition by Municipal Corporations.**

Delegation of power by state. 129: 267.

Territorial limits. 129: 269.

**§ 3. Amount and Reasonableness of Tax.**

Reasonableness in general. 129: 259.

Prohibiting taxes or licenses. 129: 260.

Discretion of legislature in fixing amount. 129: 261.

Illustrations of reasonable licenses. 129: 262.

Illustrations of unreasonable licenses. 129: 263.

True value as basis of taxation. 129: 266.

Limit on rate of taxation. 129: 267.  
 True value as basis of taxation. 129: 266.

#### § 4. Uniformity and Equality.

Classification of occupations. 129: 250.  
 — Discriminatory. 129: 253.  
 — Based on population. 129: 254.  
 — Based on amount of property or receipts of business. 129: 255.  
 — Regardless of value of receipts. 129: 256.  
 — Discriminating against nonresidents. 129: 257.  
 — Favoring war veterans. 129: 258.

#### § 5. Double Taxation.

Tax on both property and occupation. 129: 264.  
 Tax on each occupation pursued. 129: 265.  
 Tax by both state and municipality. 129: 266.

#### § 6. To Use Land—Nature and Revocability.

General nature of parol license. 31: 712, 713.  
 Revocation of unexecuted license. 31: 714.  
 Revocation by death, conveyance or action for damages. 31: 714.  
 Revocation of executed license. 31: 715.  
 Examples. 31: 716.  
 Estoppel to revoke. 31: 717.  
 — Illustrations. 31: 718.  
 — License extinguishing easement.

#### LIENS.

Of attorneys for services. See Attorney and Client, § 15.  
 Of auctioneer for services. See Auctions and Auctioneers, § 5.  
 Of banks. See Banks and Banking, §§ 12, 13.  
 Of express companies for charges. See Carriers, § 5.  
 Of carrier for demurrage. See Carriers, § 14.  
 For alimony. See Divorce, § 10.  
 Of finders of lost goods. See Finding Lost Goods, § 3.  
 Enforceable against homestead. See Homestead, § 3.  
 Innkeeper's lien. See Innkeepers, § 5.  
 Created by docketing judgment. See Judgment, § 11.  
 Of landlord on property of tenant. See Landlord and Tenant, § 20.  
 Power of receivers to create. See Receivers, § 3.

Of one cotenant on moiety of another. See Tenancy in Common, § 5.  
 Of creditors against trust estate. See Trusts, § 15.  
 Waiver of vendor's lien. See Vendor and Purchaser, § 9.  
 Purchaser's lien. See Vendor and Purchaser, § 13.

#### § 1. Equity Jurisdiction to Enforce.

Equitable lien defined. 74: 387.  
 General principles. 74: 387.  
 Liens on equitable or legal estate. 74: 388.  
 Common law and statutory liens. 74: 388.  
 Mechanics' liens. 74: 388.  
 Liens on personal property. 74: 389.  
 — Carrier's lien for freight. 74: 389.  
 — Landlord's lien on crop. 74: 389.  
 — Lien on corporate stock. 74: 390.

#### LIFE.

Care required to preserve. See Negligence, § 2.

#### LIFE ESTATES.

IN GENERAL, § 1.  
 WITH POWER OF DISPOSAL, § 2.  
 DUTIES OF LIFE TENANTS, § 3.  
 LIABILITY FOR TAXES AND ASSESSMENTS, § 4.

Courtesy in. See Courtesy, § 6.

#### § 1. In General.

Nature of relation between life tenant and remainderman. 137: 653.  
 Contribution on discharge of encumbrances. 137: 663.  
 Subrogation of life tenant on payment of claims against estate. 137: 661.  
 Proportional value of the life estate and the reversion. 137: 662.  
 Right of life tenant to acquire outstanding interests affecting remainderman. 137: 655-664.  
 Right of remainderman to benefit of outstanding interest acquired by life tenant. 137: 655, 664.  
 Valuable notes on this subject contained in the American Decisions, American Reports and American State Reports marshaled and reviewed. 137: 651, 652.

#### § 2. With Power of Disposal.

Restriction of estate to express grant. 139: 83.  
 Enlargement of estate to fee. 139: 89.



Power of appointment—In general. 139: 93.

— Rule in Shelley's Case. 139: 95.

— Power as incident to absolute ownership. 139: 96.

— Precatory trusts. 139: 99.

Personal property—Absolute title by power of disposal. 139: 105.

— Personalty and realty as regards effect of power. 139: 105.

— Limited power of disposal. 139: 107.

Statutory provisions. 139: 110.

Powers and duties of tenant—Right to convey the fee. 139: 114.

— Right to mortgage. 139: 116.

— Disposal by will or gift inter vivos. 139: 117.

— Rights and obligations in use. 139: 118.

— Care of estate. 139: 119.

### § 3. Duties of Life Tenants.

To pay taxes. 137: 659.

To pay interest on mortgages—Accruing interest. 137: 661.

— Interest due before tenant enters. 137: 661.

— Tenant in expectancy. 137: 661.

Not to renew leases for his own benefit. 137: 661.

To repair. 137: 662.

### § 4. Liability for Taxes and Assessments.

Ordinary current taxes. 114: 448; 137: 659.

Assessments for local improvements. 114: 449.

Devises of property for life. 114: 450.

Curtesy and dower. 114: 450.

Effect of sale of life estate. 114: 451.

Remedies for failure to pay taxes. 114: 451.

## LIFE INSURANCE.

Mutual or membership life insurance. See Beneficial Associations, § 2.

## LIGHT.

As appurtenance. See Deeds, § 16.

Easement of. See Easements, § 5.

## LIGHTNING.

Liability of fire insurer for loss from. See Insurance, § 32.

## LIGHTS.

Duty of vessels to carry. See Collision, § 1.

## LIMITATION OF ACTIONS.

### IN GENERAL, § 1.

ACTIONS AGAINST STOCKHOLDERS, § 2.

ACTIONS AGAINST SUBSCRIBERS TO CORPORATE STOCK, § 3.

ACTIONS AGAINST CORPORATE OFFICERS, § 4.

ACTIONS TO ENFORCE JUDGMENT, § 5.

RETROSPECTIVE OPERATION OF STATUTE, § 6.

MAXIM "TIME DOES NOT RUN AGAINST THE CROWN," § 7.

ON OBLIGATIONS PAYABLE ON OR AFTER DEMAND, § 8.

WHO MAY PLEAD THE STATUTE, § 9.

EFFECT OF BAR AS TO ONE OF SEVERAL PARTIES, § 10.

SAME, § 11.

WHERE CAUSE OF ACTION FOR NOMINAL DAMAGES RIPENS INTO A RIGHT TO ACTUAL DAMAGES, § 12.

EFFECT OF BAR OF STATUTE, § 13.

ESTOPPEL TO PLEAD STATUTE, § 14.

ACKNOWLEDGMENT OR NEW PROMISE, § 15.

See, also, Adverse Possession; Laches; Time. Lapse of time as evincing abandonment. See Abandonment, § 3.

Against abstractors for negligence or want of skill. See Abstracts of Title, § 1.

Adverse possession. See Adverse Possession. To enforce stockholder's liability. See Corporations, § 33.

Limitation laws affecting obligation of contract. See Constitutional Law, § 18.

Against county warrants. See Counties, § 1.

Suspension and revival of statute in actions on judgments. See Judgment, § 53.

Actions to enforce judgment. See Judgment, § 53.

Applicable to action for nuisance. See Nuisance, § 6.

Presumption of payment from lapse of time. See Payment, § 1.

To recover pledge or require pledgee to account. See Pledges, § 1.

Applicable to quo warranto. See Quo Warranto, § 2.

Setoff of barred claim. See Setoff and Counterclaim, § 1.

### § 1. In General.

Nature and purpose of statute. 101: 145.

### § 2. Actions Against Stockholders.

Nature of liability. 96: 973.

When statute begins to run—While still a stockholder. 96: 974.

— After transfer of shares. 96: 978.

— Discovery of facts causing liability. 96: 980.

— Where two different remedies are given. 96: 980.

— Stipulation as to time to sue. 96: 980.

— Pledge of stock as acknowledgment of debt. 96: 980.  
 Against estate of deceased stockholders. 96: 981.  
 Power of one to suspend statute as to all. 96: 981.  
 Effect of renewal of debt by corporation. 96: 982.  
 Conflict of laws. 96: 982.  
 Constitutionality. 96: 983.

### § 3. Actions Against Subscribers to Corporate Stock.

Nature of liability of subscriber for unpaid stock. 96: 983.  
 Accrual of cause—From call. 96: 984.  
 — From insolvency of corporation. 96: 985.  
 — From time payment is due. 96: 986.  
 — When contract is silent as to date of payment. 96: 986.  
 Unreasonable length of time in making calls. 96: 987.  
 Demand notes given for subscription. 96: 987.  
 Necessity for judgment and execution against corporation. 96: 988.  
 Suspension of statute by unauthorized acts of officers. 96: 988.  
 Right of creditor to sue when corporation is barred. 96: 989.

### § 4. Actions Against Corporate Officers.

Liability considered penal. 96: 989.  
 When right of action accrues. 96: 992.  
 Judgment against corporation and renewal of indebtedness suspends statute. 96: 993.  
 Successive defaults. 96: 994.  
 Officers as trustees. 96: 994-997.

### § 5. Actions to Enforce Judgment.

Historical review of effect of statute on enforcement of judgment. 133: 64.  
 Accrual of cause of action on civil judgment. 133: 72.  
 Suspension and revival of statute in actions on judgments. 133: 76.  
 Effect of lapse of time on right to issue execution. 133: 70.

### § 6. Retrospective Operation of Statute.

General rule giving power to enact retrospective law. 111: 455.

Restrictions on power—Removing bar of statute. 111: 456.

— Unreasonable shortening of time. 111: 457.

Construction of statute with respect to its retrospective operation. 111: 459.

Conflict of laws. 111: 461.

### § 7. Maxim "Time Does not Run Against the Crown."

Origin and purpose of the maxim. 101: 146.

United States. 101: 151.

States. 101: 152.

Counties. 101: 154.

School boards and districts. 101: 156.

Municipal corporations. 101: 157.

Foreign governments. 101: 158.

Sovereignty defined. 101: 158.

Status of governmental bodies representing sovereign. 101: 161.

Necessity that statute expressly applying limitations name sovereign. 101: 164.

Construction of statutes affecting governmental bodies. 101: 166.

Rights of sovereign as litigant—In general. 101: 169.

— When merely nominal plaintiff. 101: 171.

— Litigation affecting public rights. 101: 173.

— Litigation affecting private rights or ordinary business transactions. 101: 179.

Actions and proceedings in which the maxim has been set up in favor of governmental bodies—In general. 101: 185-187.

— Restraint of public nuisance. 101: 187.

— Escheat proceedings. 101: 187.

— Quo warranto proceedings. 101: 187.

### § 8. On Obligations Payable on or After Demand.

Demand equivalent to no demand. 136: 469.

Obligations payable on demand, contracts, bills, notes, checks, bonds, implied contracts for labor or money loaned. 136: 470-473.

Obligations payable after demand, various obligations set forth. 136: 473-487.

Obligations payable at specified time after demand. 136: 488.  
When demand should be made, rule in various states. 136: 489, 490.

### § 9. Who may Plead the Statute.

Right as a privilege. 104: 743.  
Right to waive privilege. 104: 744.  
Estoppel to plead statute. 104: 746.  
General rule. 104: 747.  
Legal capacity—Nonresidents. 104: 748.  
— Foreign and domestic corporations. 104: 749.  
Personal or official relations—Husband and wife. 104: 749.  
— Fiduciary relations. 104: 749.  
— Church officials or trustees. 104: 752.  
— Creditors. 104: 752.  
— Principal and surety. 104: 754.  
— Persons entitled to subrogation. 104: 755.  
— Partners and their creditors. 104: 755.  
— Garnishees, receivers and assignees. 104: 756.  
— Executors and administrators. 104: 756.  
— Discharged insolvents. 104: 760.  
Interest or estate of parties. 104: 760–765.  
Mode of acquisition of estate or interest. 104: 765.  
— Assignees. 104: 766.  
— Heirs, devisees and legatees. 104: 768–770.

### § 10. Effect of Bar as to One of Several Parties.

In ordinary cases. 49: 712.  
In will contests. 49: 710.

### § 11. Same.

In general. 60: 201.  
On right to contribution. 60: 208.  
Mortgagor and person assuming debt. 60: 205.  
Principal and surety. 60: 207.

### § 12. Where Cause of Action for Nominal Damages Ripens into a Right to Actual Damages.

Action for breach of contract. 126: 944.  
Action involving title to real estate. 126: 946.

Action against public officer. 126: 949.  
Action against attorney for negligence. 126: 950.  
Action against doctor for malpractice. 126: 951.  
Action for tort or negligence—Continuous or repeated injury and nuisances. 126: 953.  
— Interference with flow of water or with lateral support. 126: 954.

### § 13. Effect of Bar of Statute.

General theory and policy of statute. 95: 656.  
Affects remedy only or extinguishes debt. 95: 658.  
Bar of statute as a vested right. 95: 659.  
Conflict of laws. 95: 660.  
Bar of one of two remedies as bar to the other. 95: 661.  
Bar of debt as bar of pledge or security. 95: 662.  
Bar of lien by bar of debt it secures. 95: 662.  
— Vendor's lien. 95: 663.  
Bar of debt as barring mortgage. 95: 664, 665.  
Bar of mortgage as affecting debt. 95: 669.

### § 14. Estoppel to Plead Statute.

In general. 104: 746.  
Agreement not to plead. 95: 411.  
— Oral. 95: 417.  
Agreement to pay debt. 95: 418.  
Fraud. 95: 419.  
False representations. 95: 420.  
Subscription to stock. 95: 421.  
Administrators and heirs. 95: 421.  
Mortgagees. 95: 422.  
Purchasers of land. 95: 422.  
Miscellaneous. 95: 423.

### § 15. Acknowledgment or New Promise.

General effect. 102: 752.  
To whom must be made. 102: 754.  
Time to make. 102: 756.  
General requirements. 102: 757.  
— Must be written. 102: 758.  
— Sufficiency of writing. 102: 759.  
— Must be definite and certain. 102: 763.  
Effect of admissions in judicial proceedings. 102: 760.

Effect of testamentary provisions regarding debt. 102: 762.  
 Necessity for existing liability to be admitted. 102: 766.  
 Effect of mere acknowledgment. 102: 766.  
 What constitutes express or implied promise. 102: 768.  
 Acts or writings held to show an acknowledgment or new promise. 102: 769-772.  
 Necessity that promise be unqualified. 102: 774.  
 Conditional promise. 102: 775.  
 Offer to compromise. 102: 776.

#### **LIMITATION OF LIABILITY.**

Of carrier for loss or injury to goods. See Carriers, §§ 18-28.  
 Of express company. See Carriers, § 5.  
 For injury to livestock in transit. See Carriers, § 29.  
 Of carrier for baggage. See Carriers, § 61.  
 Notices on passenger tickets as contracts limiting liability. See Carriers, § 36.  
 Of hotel-keepers. See Innkeepers, § 4.  
 By cold storage companies. See Warehousemen, § 3.

#### **LIMITATIONS.**

On transfers of corporate stock. See Corporations, § 21.  
 On amount of license tax. See Licenses, § 3.  
 Effect of bar of statute on mortgage. See Mortgages, § 17.

#### **LIMITED GUARANTY.**

What constitutes. See Guaranty, § 2.

#### **LIMITED TICKETS.**

Status of persons riding on. See Carriers, § 38.

#### **LIMITING ARGUMENT.**

Right of court to limit argument or refuse to hear argument. See Trial, § 2.

#### **LIMITING NUMBER OF WITNESSES.**

Power of court. See Witnesses, § 1.

#### **LIQUIDATED DAMAGES.**

See Damages, §§ 13-15.

#### **LIQUIDATED DEMANDS.**

Consideration for satisfaction of. See Accord and Satisfaction, § 3.

#### **LIS PENDENS.**

##### **§ 1. General Note.**

Necessity for the rule. 56: 853.  
 Foundation of the rule. 56: 853.

Proceedings in which rule applies. 56: 855.

Statutory modification of the rule. 56: 855.

Rule of lis pendens stated. 56: 857.

Territorial operation of the rule. 56: 861.

Property subject to. 56: 862.

— Negotiable instruments before maturity. 56: 863.

— Only property directly affected by the suit. 56: 864.

— Pleadings must point out property affected. 56: 866.

Effect of amendment of pleadings. 56: 867.

— Not introducing new cause of action. 56: 868.

Facts of which lis pendens gives notice. 56: 869.

— Facts putting on inquiry. 56: 869.

Persons affected—In general. 56: 870.

— Grantee of plaintiff. 56: 868.

— Grantee in unrecorded conveyance. 56: 871.

Involuntary transfer pending suit. 56: 872.

Prosecution of suit with reasonable diligence. 56: 873.

New suits and revival of action. 56: 874.

Abatement of suit. 56: 875.

Appeal or other review. 56: 875.

— Bill of review. 56: 876.

Termination of lis pendens. 56: 877.

— By abatement of suit. 56: 875.

#### **§ 2. Divorce Proceedings.**

When suits for divorce and alimony do not operate as. 102: 706-708.

#### **LITTORAL PROPRIETORS.**

Right to flats on navigable waters. See Navigable Waters, § 3.

#### **LIVERY-STABLE KEEPERS.**

License on. See Licenses, § 1.

#### **LIVESTOCK.**

See Animals.

#### **LIVESTOCK CARRIERS.**

See Carriers, §§ 29-32.

#### **LIVING TOGETHER.**

What constitutes. See Adultery, § 1.

**LOADING STOCK.**

Duty of carrier. See Carriers, § 29.

**LOAFERS.**

As vagrants. See Vagrancy, § 2.

**LOANS.**

Effect of insolvency of loan societies. See Building and Loan Associations, § 1.  
For gambling. See Gaming, § 1.  
By guardians. See Guardian and Ward, § 8.  
By infants. See Infants, § 1.  
Necessary to usurious transaction. See Usury, § 1.

**LOAN SOCIETIES.**

Rights and liabilities of members on insolvency. See Building and Loan Associations, § 1.

**LOBBYING.**

Taxation for. See Taxation, §§ 3, 4.

**LOBBYING CONTRACTS.**

Validity. See Contracts, § 7.

**LOCAL ACTIONS.**

What are. See Venue, § 1.

**LOCAL IMPROVEMENTS.**

Assessments for. See Municipal Corporations, § 18.

**LOCAL LAWS.**

Prohibited where general law can be made applicable. See Constitutional Law, § 23.  
What are. See Statutes, § 8.

**LOCAL OPTION.**

Validity of local option laws. See Constitutional Law, § 2.  
Validity of local option liquor laws. See Intoxicating Liquors, § 1.

**LOCATION.**

Conclusiveness of location of boundaries. See Boundaries, § 9.  
Of private road. See Private Roads, § 1.  
Of personal property for purpose of taxation. See Taxation, § 13.

**LOCATORS.**

Rights of mine locator before discovery. See Mines and Minerals, § 4.

**LOCOMOTIVES.**

Frightening animals. See Railroads, § 10.  
Validity of law requiring spark-arresters on. See Railroads, § 14.

**LODES.**

Mineral lodes included in mineral patent. See Mines and Minerals, § 5.

**LODGING-HOUSE.**

Subject to burglary. See Burglary, § 1.  
Lien of keeper for lodging. See Innkeepers, § 5.

**LOGS AND LOGGING.**

Effect of commingling of logs belonging to different owners. See Confusion of Goods, § 2.  
Timber deeds. See Deeds, § 15.  
Condemnation of land for logging. See Eminent Domain, § 4.

**LOOKOUT.**

Duty to keep lookout on boats. See Collision, § 1.

**LOSS.**

Certificate of loss. See Insurance, § 36.  
Who bears loss of goods sold before price is paid or in transit. See Sales, §§ 13-15.

**LOSS OF AFFECTION.**

As justification for breach of contract to marry. See Breach of Marriage Promise, § 1.

**LOST CORNERS.**

Evidence to establish. See Boundaries, § 4.

**LOST GOODS.**

Rights and duties of finders of lost goods. See Finding Lost Goods, §§ 1-3.

**LOST INSTRUMENTS.**

Lost certified check. See Banks and Banking, § 5.

Probate and establishment of lost will. See Wills, §§ 25, 28, 27.

**§ 1. Actions on.**

Jurisdiction—In general. 44: 466.

— Lost bond. 94: 467.

— Lost bills and notes. 94: 468.

— Miscellaneous instruments. 94: 470.

Indemnity bonds—Requisites. 94: 471.

— Time to give. 94: 475.

Affidavit of loss. 94: 475.

Parties and pleading. 94: 475, 480.

Defenses. 94: 479.

**§ 2. Proof of Contents.**

Sufficiency of parol proof. 134: 1095.  
Must be clear, positive and satisfactory. 134: 1095.

Where instrument is lost by person bound. 134: 1095.

Knowledge of witness necessary to admit his testimony. 134: 1096.

**LOST PROPERTY.**

Subject to larceny. See Larceny, § 2.

**LOST WILL.**

Presumption of revocation of. See Wills, § 18.

Probate and establishment of. See Wills, §§ 25, 26, 27.

**LOTTERIES.**

See Gaming.

May be declared criminal. See Criminal Law, § 1.

Use of mails for. See Postoffices, § 3.

**§ 1. What Constitutes a Lottery.**

General definition. 16: 42; 103: 711-713.

Illustration of schemes constituting. 16: 43-47.

Gift enterprises. 16: 47.

Raffles. 16: 48.

Wheel of fortune. 16: 48.

**LOTTO.**

As gambling device. See Gaming, § 5.

**LOUISIANA.**

Nature and essentials of oral wills in Louisiana. See Wills, § 10.

**LOVE AND AFFECTION.**

As consideration for deed. See Deeds, § 10.

**LUCID INTERVALS.**

Validity of contracts made by insane person during lucid interval. See Insane Persons, § 4.

**LUMBER.**

Effect of intermixture of logs belonging to different owners. See Confusion of Goods, § 1.

As a necessary of life. See Monopolies, § 1.  
Right to replevin trees converted into lumber. See Replevin, § 2.

**LUNATICS.**

See Insane Persons.

**LUNCH WAGONS.**

On streets. See Municipal Corporations, § 22.

**MACHINERY.**

Right to operate machinery as affected by rights of adjoining owner. See Adjoining Land Owners, § 2.

Liability of master for injuries to servants from defective or unguarded machinery. See Master and Servant, §§ 8-25.

Manufacturer's liability to third persons for negligence. See Negligence, § 9.

**MAGAZINES.**

Libels in. See Libel and Slander, § 4.

**MAGNETIC HEALING.**

As practice of medicine. See Physicians and Surgeons, § 4.

**MAIL.**

Offense of opening. See Postoffices, § 1.

Theft of mail. See Postoffices, § 2.

Original use of mail and violation of postal laws. See Postoffices, § 3.

**MAIL CARRIERS.**

Right to exemptions as laborers. See Exemptions, § 3.

**MAIL CLERKS.**

As passengers. See Carriers, § 38.

**MALICE.**

As element of arson. See Arson, § 1.

**MALICIOUS ATTACHMENT.**

See Attachment, § 7.

**MALICIOUS INJURY.**

Liability of master for malicious acts of servant. See Master and Servant, § 33.

**MALICIOUS MISCHIEF.****§ 1. In General.**

Nature and elements. 128: 163.

Acts under claim of right. 128: 164.

Malice. 128: 165.

Property subject to offense. 128: 166.

Acts constituting the offense. 128: 167.

Defenses. 128: 168.

Evidence—Admissibility. 128: 170.

— Sufficiency. 128: 171.

— Presumptions. 128: 171.

**§ 2. Indictment.**

General essentials. 128: 172.

Allegation of malice. 128: 173.

Means of injury and extent thereof. 128: 173.

Value of property injured. 128: 174.

Ownership of property. 128: 174.

**MALICIOUS PROSECUTION.****§ 1. Of Civil Action.**

Basis of right of action for. 93: 454.

Cases in which action will lie. 93: 456.

Probable cause. 93: 458.

— Advice of counsel. 93: 460.

— Dismissal of action. 93: 461.  
 Malice. 93: 462.  
 Malicious attachment. 93: 463.  
 Damages. 93: 465.  
 — Attorneys' fees. 93: 466.  
 Seizure of person or property. 93: 466.  
 Form of action. 93: 469.  
 Joint or several action. 93: 469.  
 Termination of action. 93: 470.  
 Statute of limitations. 93: 471.  
 Evidence. 93: 471.  
 Pleadings. 93: 473.

## § 2. Of Criminal Proceedings.

Prerequisites to right of action. 26: 128.  
 Prosecutions giving cause of action. 26: 128.  
 Defects in the accusation or proceeding. 26: 129.  
 Where the charge is true but conviction fails. 26: 129.  
 Want of jurisdiction where prosecution was commenced. 26: 129.  
 Necessity for arrest of plaintiff. 26: 130.  
 Persons liable. 26: 131.  
 — Corporations. 26: 131.  
 — Partnerships. 26: 132.  
 — Associations contributing funds to aid prosecution. 26: 132.  
 — Infants. 26: 132.  
 Evidence to show who was real prosecutor. 26: 133.  
 Liability of principal for prosecution by agent. 26: 134.  
 Termination of prosecution. 26: 135.  
 — Discharge by committing magistrate. 26: 135.  
 — Failure of grand jury to find indictment. 26: 135.  
 — Entry of nolle prosequi. 26: 136.  
 — Other means of terminating. 26: 136.  
 Prosecution resulting in conviction. 26: 137.  
 Guilt bars recovery. 26: 138.  
 Probable cause—Defined. 26: 138.  
 — Prejudice or partiality of accuser. 26: 139.  
 — Belief of accuser. 26: 140.  
 — As question for jury. 26: 141.  
 — Conviction conclusively proves probable cause. 26: 142.  
 — Indictment as evidence of. 26: 143.

— Advice of counsel. 26: 143.  
 — Advice of prejudiced attorney. 26: 145.  
 — Advice must be sought in good faith. 26: 146.  
 — Advice, failure to disclose all the facts. 26: 146.  
 — Instances of probable cause. 26: 147.  
 Malice—Necessity. 26: 149.  
 — What constitutes. 26: 150.  
 — A question for the jury. 26: 151.  
 — Method of proving. 26: 151.  
 Pleadings—Complaint. 26: 152, 153.  
 — Answer. 26: 153.  
 Evidence—Burden of proof. 26: 153.  
 — Of proceedings in court. 26: 154.  
 — Failure to indict. 26: 154.  
 — Acquittal as evidence of want of probable cause. 26: 155.  
 — Of collateral purpose of prosecution. 26: 155.  
 — Tending to prove actual ill-will. 26: 156.  
 — Facts and circumstances under which prosecutor acted. 26: 156.  
 Evidence for defendant—Judicial proceedings. 26: 158.  
 — Bad reputation of plaintiff. 26: 158.  
 — Other offenses. 26: 159.  
 — Motives of prosecution. 26: 159.  
 — Facts justifying prosecution. 26: 160.  
 — Mere suspicion or belief. 26: 160.  
 — Knowledge of prosecutor and its source. 26: 161.  
 Damages—In general. 26: 162.  
 — Injury to reputation. 26: 163.  
 — Mental suffering. 26: 163.  
 — Attorneys' fees. 26: 163.  
 — Condition of plaintiff's family. 26: 163.  
 — Effect of prosecution on members of family. 26: 163.  
 — Exemplary or punitive damages. 26: 163.  
 — Wealth of defendant. 26: 164.  
 — Mitigation of damages. 26: 164.

## MALPRACTICE.

Liability of physicians and surgeons for.  
 See Physicians and Surgeons, § 2.

**MANDAMUS.**

**IN GENERAL, § 1.**  
**BY PRIVATE INDIVIDUAL, § 2.**  
**NECESSARY PARTIES, § 3.**  
**TO COMPEL PERFORMANCE OF DUTY, § 4.**  
**AGAINST MINISTERIAL OFFICERS AND BOARDS, § 5.**  
**AGAINST JUDICIAL OFFICERS AND TRIBUNALS, § 6.**  
**AGAINST GOVERNOR OF STATE, § 7.**  
**TO COMPEL ISSUE OR LEVY OF EXECUTION, § 8.**  
**TO COMPEL PERFORMANCE OF CORPORATE DUTY, § 9.**

Against associations. See Associations, § 3.  
 Right of members of mutual aid societies to mandamus. See Beneficial Associations, § 7.  
 To compel issue or transfer of corporate stock. See Corporations, § 22.  
 To try title to office. See Officers, § 12.

**§ 1. In General.**

Definition and requisites of issuance. 98: 865.  
 Right must be clear. 98: 865.  
 Interest necessary to obtain. 98: 865.  
 Existence of other adequate remedy as bar. 98: 866.  
 Does not create new duties. 98: 868.  
 Not granted where unavailing. 98: 869.  
 Not granted where long accounts or rights of others are involved. 98: 869.

**§ 2. By Private Individual.**

To compel performance of public duty. 7: 484-486.

**§ 3. Necessary Parties.**

Petitioners or relators—Interested parties. 105: 122.  
 — State or people. 105: 122.  
 Defendants or respondents—Interested parties. 105: 123.  
 — Persons having an interest in land. 105: 124.  
 — Lessors and lessees. 105: 124.  
 — Adverse claimants to office. 105: 125.  
 — Body or board of officers. 105: 125.  
 — Other persons. 105: 126.

**§ 4. To Compel Performance of Duty.**

Duty must be clear, positive and legal. 125: 493.  
 Duty must be specific. 125: 496.

Public interest must have suffered where duty is public. 125: 497.

Right to compel act depends upon the act not the position of the person. 125: 498.

Ministerial duties. 125: 499.

Duties involving exercise of judgment or discretion. 125: 502.

Trust duties. 125: 509.

Political or governmental duties. 125: 509.

Contractual duties. 125: 511.

Corporate duties arising out of franchise or exercise of power of eminent domain. 125: 513.

Grant or refusal of license or permit. 125: 516.

Canvassing of votes and right to office. 125: 517.

Approval of official bonds. 125: 518.

School management. 125: 518.

Public improvements. 125: 519.

Disbursement of public funds. 125: 520.

Tax levies and assessments. 125: 521.

Court proceedings. 125: 521.

**§ 5. Against Ministerial Officers and Boards.**

Controls ministerial but not discretionary acts. 98: 869.

Clerical officers. 98: 870.

Tax collectors. 98: 871.

Treasurers. 98: 871.

Sheriffs and constables. 98: 872.

Land officers. 98: 873.

Patent and pension officers. 98: 873.

Executive heads. 98: 874.

Compelling officer to attend meeting. 98: 875.

Examination of public records. 98: 875.

Award and performance of public contracts. 98: 875.

Laying out and repairing roads, streets and bridges. 98: 876.

Issuance and revocation of license or certificate. 98: 876.

Management of schools. 98: 878.

Auditing and allowing claims. 98: 879.

Drawing warrants. 98: 880.

Payment of claims. 98: 880.

Levy of tax to meet obligations. 98: 883.

Issue of bonds and payment of interest on them. 98: 884.

Trying title to public office. 98: 884.



**Matters relating to elections.** 98: 886.  
 — **Canvassing boards.** 98: 888.  
**Compelling holding county office at county seat.** 98: 890.

**§ 6. Against Judicial Officers and Tribunals.**

**Compels action but not manner of action.** 98: 890.  
**Compels court to take jurisdiction.** 98: 891.

**Not a substitute for appeal or writ of error.** 98: 891.

**Allowance of appeal.** 98: 893.

**Signing or entering judgment.** 98: 894.

**Correcting errors in judgments, records and dockets.** 98: 895.

**Granting trial by jury.** 98: 895.

**Awarding and taxing costs.** 98: 896.

**Granting or refusing new trial.** 98: 896.

**Approval of bonds.** 98: 896.

**Changing venue.** 98: 897.

**Remanding cause from federal to state court.** 98: 897.

**Issuing and dissolving injunction.** 98: 898.

**Admission or reinstatement of attorney.** 98: 899.

**Dismissal of action.** 98: 899.

**Reinstatement of cause.** 98: 899.

**Granting continuance.** 98: 900.

**Vacating orders and decrees.** 98: 900.

**Reviewing rulings on evidence.** 98: 902.

**Signing bills of exceptions.** 98: 902.

**Filing and striking out pleadings.** 98: 903.

**Enforcing stipulations.** 98: 903.

**Allowing substitution or intervention.** 98: 903.

**Issuing execution.** 98: 904.

**Quashing and reinstating attachments.** 98: 904.

**Forcing inferior court to execute mandate.** 98: 904.

**Criminal proceedings.** 98: 905.

**Habeas corpus proceedings.** 98: 907.

**Contempt proceedings.** 98: 907.

**Miscellaneous instances.** 98: 908.

**§ 7. Against Governor of State.**

**To control discretion.** 31: 295.

**To control ministerial acts.** 31: 295.

**Authorities denying right.** 31: 296.

— **Illustrations.** 31: 299.

**Authorities authorizing use of writ.** 31: 299.

— **Illustrations.** 31: 304.

**§ 8. To Compel Issue or Levy of Execution.**

**In general.** 74: 152.

**Against justice of the peace.** 74: 152.

**Issue of second execution.** 74: 153.

**Existence of legal remedy as bar.** 74: 153.

**Where title to property is in another.** 74: 153.

**§ 9. To Compel Performance of Corporate Duty.**

**Jurisdiction by mandamus over private corporations.** 37: 317.

**Effect of issuance of writ.** 37: 318.

**Duties which may be compelled.** 37: 318.

**Effect of charter provisions.** 37: 319.

**By church or religious corporation.** 37: 319.

**Compelling admission of member.** 37: 320.

**Existence of remedy at law as bar.** 37: 320.

**By railroad corporation.** 37: 321.

— **Compelling operation of road.** 37: 322.

**To compel issue or transfer of corporate stock.** 133: 724-728.

**To compel registry of transfer of corporate stock.** 136: 1041.

**MANSLAUGHTER.**

**See Homicide, § 2.**

**MANUFACTURES.**

**Wrongful taking of raw material gives no title to manufacturer.** *See Accession, § 1.*

**Police power of state to regulate manufacture of goods.** *See Constitutional Law, § 7.*

**Liability of drug manufacturers for negligence.** *See Druggists, § 1.*

**Condemnation of land for.** *See Eminent Domain, § 4.*

**Liability of manufacture of unwholesome food.** *See Food, § 1.*

**Combinations and contracts of manufacturers in unreasonable restraint of trade.** *See Monopolies, § 1.*

**Liability of manufacturers to third persons for negligence.** *See Negligence, § 9.*

**§ 1. In General.**

**Liability of manufacturers to third person for defects in manufactured article or dangerous article.** 111: 701-716.

**Deposit of debris or waste in streams or upon their banks so that it is carried to lands of riparian owners.** 30: 551-557.

**MANUSCRIPTS.**

As baggage. See Carriers, § 58.

**MAPS.**

Considered in ascertaining boundary. See Boundaries, § 1.

**MARGINAL PURCHASES.**

Rights of purchasers. See Brokers, § 1.

**MARINE INSURANCE.**

Risks covered by policy. See Insurance, §§ 33, 35.

**MARKETABLE TITLE.**

What constitutes. See Vendor and Purchaser, § 8.

**MARKETS.**

Power of cities to establish and regulate. See Municipal Corporations, § 2.

**MARKET VALUE.**

As list of measure of damages. See Damages, § 4.

**MARKS.**

Distinguishing marks on election ballots. See Elections, § 7.

**MARRIAGE.**

NATURE OF RELATION, § 1.

EXTRATERRITORIAL EFFECT OF LAWS REGULATING, § 2.

COMMON-LAW MARRIAGE, § 3.

WHAT MARRIAGES ARE VOID, § 4.

EFFECT OF VOID MARRIAGE, § 5.

COMPELLING DIVISION OF PROPERTY ACCUMULATED DURING VOID MARRIAGE, § 6.

PRESUMPTION IN FAVOR OF SECOND MARRIAGE, § 7.

ANNULMENT, § 8.

Proof of marriage in prosecution for bigamy. See Bigamy, § 2.

Defenses in suit for breach of promise to marry. See Breach of Marriage Promise, § 1.

Validity of marriage brokerage contracts. See Contracts, § 10.

Prerequisite to curtesy. See Curtesy, §§ 3, 7.

Power to compel party to suit to annul marriage to submit to physical examination. See Discovery, § 2.

Effect of marriage of ward on guardianship. See Guardian and Ward, § 4.

Conditions in wills in restraint of. See Wills, § 43.

**§ 1. Nature of Relation.**

As civil contract. 124: 104.

As a status. 124: 105.

Doctrine of personal unity resulting from marriage discussed. 133: 607-609.

**§ 2. Extraterritorial Effect of Laws Regulating.**

Marriage valid where made valid everywhere. 60: 941.

— Except incestuous and polygamous marriages or those violating law of nations. 60: 942.

Effect of leaving state to evade its laws and returning after marriage. 60: 942-947.

**§ 3. Common-law Marriage.**

General features. 124: 105.

Necessity and form of contract. 124: 107-109.

Consent of parties. 124: 110.

Cohabitation. 124: 111-117.

Reputation. 124: 118.

Presumption from cohabitation and reputation. 124: 120.

Statutes prescribing formalities of marriage. 124: 121.

Validity of common-law marriages in various states. 124: 122.

**§ 4. What Marriages are Void.**

Law governing. 79: 364.

Common-law marriages. 79: 361.

Marriage after divorce. 79: 368.

Marriage without consent. 79: 370.

Marriage procured by fraud. 79: 371.

— Antenuptial pregnancy. 79: 372.

Marriage by persons under disability. 79: 373.

— Indians and whites. 79: 382.

Marriage by abandoned spouse. 79: 374.

Infants and insane persons. 79: 374, 376.

Bigamous and incestuous marriages. 79: 378, 380.

Miscegenous and slave marriages. 79: 382, 383.

**§ 5. Effect of Void Marriage.**

May be disregarded or attacked collaterally. 96: 267.

Necessity and propriety of annulment. 96: 268.

Dissolution and alimony thereon. 96: 269.

Property rights—Effect of good faith. 96: 270.

— Individual property of each. 96: 270.

— Money advanced by wife. 96: 271.

— Property of deceased party. 96: 271.

- Dower and curtesy. 96: 272.
- Property acquired during marriage. 96: 272.
- Husband's right to damages for injury to wife. 96: 276.
- Services of wife. 96: 276.
- Husband liable for fraud in inducing marriage. 96: 277.
- Effect on settlement or domicile of wife. 96: 277.

#### § 6. Compelling Division of Property Accumulated During Void Marriage.

- Marriage as prerequisite to alimony. 68: 375.
- Property rights arising out of void marriage. 68: 376.
- Civil-law rule. 68: 377.
- Rule in Texas. 68: 378, 379.

#### § 7. Presumption in Favor of Second Marriage.

- The general rule. 89: 198.
- Rule not inflexible. 89: 204-206.
- Former spouse presumed dead. 89: 199.
- Former marriage presumed dissolved. 89: 199.
- Evidence to overcome presumption. 89: 200.
- In bigamy prosecutions. 89: 200.
- Limitations on presumption. 89: 201.
- Both spouses must act inconsistently with former marriage. 89: 202.
- Absentee cannot invoke presumption. 89: 202.
- Rule in criminal cases. 89: 204.
- Flexibility of rule. 89: 204-206.

#### § 8. Annulment.

- Kleptomania as ground for annulment. 89: 388.
- Power of courts to create lien for alimony on annulment of marriage. 102: 710.

#### MARRIAGE BROKERAGE.

- Validity of marriage brokerage contracts. See Contracts, § 10.

#### MARRIAGE SETTLEMENTS.

- In fraud of creditors. See Fraudulent Conveyances, § 7.
- Right of creditors to attack. See Husband and Wife, § 4.
- Capacity of infants to make. See Infants, § 1.

#### MARRIED WOMEN.

- See Husband and Wife.

#### MARSHALING ASSETS AND SECURITIES.

- Where mortgage is given to secure future advances. See Mortgages, § 5.

#### MARTIAL LAW.

- Other than in time of war. See Riot, § 1.

#### MASSSES.

- Validity of bequests for. See Charities, § 3.

#### MASTER AND SERVANT.

- LIABILITY OF PERSON INDUCING BREACH OF CONTRACT OF EMPLOYMENT, § 1.
- CONTRACTS FOR PERMANENT EMPLOYMENT, § 2.
- PRESUMPTION THAT SERVICES OF RELATIVE ARE GRATUITOUS, § 3.
- LIABILITY FOR MEDICAL ATTENDANCE ON INJURED EMPLOYEE, § 4.
- REMEDIES FOR WRONGFUL DISCHARGE, § 5.
- PROTECTION OF MASTER'S SECRETS, § 6.
- INJURIES TO SERVANT, § 7.
- TOOLS, MACHINERY AND APPLIANCES, § 8.
- CARE REQUIRED OF MASTER, § 9.
- MASTER'S KNOWLEDGE OF DEFECT, § 10.
- LATENT DEFECTS, § 11.
- CARE REQUIRED OF SERVANT, § 12.
- CARE REQUIRED OF MINE OWNER, § 13.
- STATUTORY DUTIES OF MINE OWNERS TO PROMOTE SAFETY OF MINERS, § 14.
- LIABILITY OF SHIP OWNER FOR INJURIES TO SAILOR, § 15.
- LIABILITY FOR INJURY WHILE VOLUNTARILY PERFORMING DUTY OUTSIDE OF EMPLOYMENT, § 16.
- WARNING AND INSTRUCTING SERVANT, § 17.
- FELLOW-SERVANTS, § 18.
- WHO ARE VICE-PRINCIPALS, § 19.
- SAME, § 20.
- ASSUMPTION OF RISK, § 21.
- BY EMPLOYEES OF MINES, § 22.
- PROMISE TO REPAIR DEFECTIVE MACHINERY, § 23.
- RIGHTS OF SERVANT ACCEPTING EXTRAHAZARDOUS DUTIES, § 24.
- INJURY FROM DEFECT IN MACHINERY KNOWN TO SERVANT BUT RESULTING FROM MASTER'S BREACH OF PROMISE TO REPAIR, § 25.
- ASSUMPTION OF RISK AND CONTRIBUTORY NEGLIGENCE, § 26.
- CONTRIBUTORY NEGLIGENCE, § 27.
- YOUTHFUL SERVANTS, § 28.
- ACTIONS FOR INJURIES, § 29.
- EVIDENCE OF NEGLIGENCE, § 30.
- LIABILITY FOR INJURIES TO THIRD PERSONS, § 31.
- EXISTENCE OF RELATION, § 32.

- ACTS FOR WHICH MASTER IS NOT LIABLE, § 33.
- LIABILITY FOR NEGLIGENCE OF INDEPENDENT CONTRACTORS, § 34.
- LIABILITY IN EXEMPLARY DAMAGES FOR ACTS OF SERVANT, § 35.

Services of adopted child presumed gratuitous. See Adoption, § 3.  
 Services of bastard presumed gratuitous. See Bastards, § 1.  
 Effect of contract with master relieving carrier from liability for injury to servant. See Carriers, § 33.  
 Liability of charitable institutions for torts of servants. See Charities, § 4.  
 Police power to regulate time and method of payment and amount of wages. See Constitutional Law, § 10.  
 Crime of servant coerced by master. See Criminal Law, § 6.  
 Services of infants. See Infants, § 5.  
 Enjoining breach of contract by master or servant. See Injunction, § 7.  
 Fidelity and employer's liability insurance. See Insurance, §§ 47-53.  
 Blacklisting. See Libel and Slander, § 3.  
 Imputing negligence of master or fellow-servant to servant. See Negligence, § 14.  
 Protection of trade secret or secret process from disclosure by servant. See Patents, § 1.  
 Master's right to invention of servant. See Patents, § 2.  
 Validity of contract releasing master from liability for injuries to servant. See Release, § 5.  
 Specific performance of contracts for personal services. See Specific Performance, § 6.

### § 1. Liability of Person Inducing Breach of Contract of Employment.

Inducing discharge of servant. 11: 474.  
 Inducing servant to quit. 11: 474.  
 Where labor is payable by share of crop. 11: 475.  
 Piece workers. 11: 476.  
 Actual service need not be shown. 11: 476.  
 Obligation to serve must be shown. 11: 476.  
 Attempting to induce breach. 11: 477.  
 Knowledge of employment necessary. 11: 477.  
 Coercing and harboring servant. 11: 477.  
 Enticing servant. 11: 478.  
 Action by employer, injunction and damages. 11: 478.

### § 2. Contracts for Permanent Employment.

Validity in general. 51: 301.  
 Verbal agreement. 51: 301.  
 Contract to serve for life. 51: 302.

Construction of words "permanent," "steady" or "constant" employment. 51: 302, 303.

### § 3. Presumption That Services of Relative are Gratuitous.

In general. 133: 250.  
 Blood relations—Children. 133: 251, 252.  
 — Brothers and sisters. 133: 253.  
 — Grandchildren, cousins, nephews and nieces. 133: 254.  
 Persons related by affinity—Sons and daughters in law. 133: 254.  
 — Brothers and sisters in law. 133: 255.  
 — Stepchildren. 133: 255.  
 — Stepchildren in law. 133: 255.  
 Quasi members of family—Adopted child. 133: 256.  
 — Illegitimate children and de facto members. 133: 256.  
 Effect of emancipation of child. 133: 256.

### § 4. Liability for Medical Attendance on Injured Employee.

Where necessity is urgent and surgeon is called by master. 1: 199.  
 Negligence of employer. 1: 200.

### § 5. Remedies for Wrongful Discharge.

Choice of remedies. 51: 515.  
 Action for damages. 51: 515.  
 Action for wages. 51: 516.  
 One recovery bars further suit. 51: 516.  
 Amount recoverable. 51: 517.  
 Doctrine of constructive service and successive recoveries repudiated. 51: 517, 518.

### § 6. Protection of Master's Secrets.

Disclosure of secret process or trade secret prohibited. 133: 763.

### § 7. Injuries to Servant.

Whether an employee of a car owner is bound by a contract between his master and a railway company exempting the latter from liability while hauling the car. 130: 47.

### § 8. Tools, Machinery and Appliances.

Duty to furnish safe appliances and places. 33: 766.

Duty of mine owner to provide safe place to work. 87: 559.  
 Duty of mine owner to provide safe machinery and appliances. 87: 560.  
 Duty of railroads to furnish improved appliances for servants. 65: 738-742.  
 Liability for failure to comply with statute requiring guard for machinery. 131: 437.  
 Proximate cause of injury from defects in machinery and appliances. 98: 321.

**§ 9. — Care Required of Master.**

Not held as insurer. 98: 290.  
 Ordinary and reasonable care. 98: 291.  
 Use of latest appliances. 98: 292.  
 What is ordinary care. 98: 294.  
 Animals must be safe, not vicious. 98: 296.  
 Duty to repair. 98: 296.  
 Duty to inspect. 98: 297.  
 Duty to guard or inclose dangerous machinery. 98: 299.  
 Explosives. 98: 300.  
 Delegation of duty. 98: 300.  
 Repair by servant. 98: 303.

**§ 10. — Master's Knowledge of Defect.**

Necessity for notice. 98: 303.  
 Notice to servant as notice to master. 98: 304.

**§ 11. — Latent Defects.**

Structural defects. 98: 305.  
 Appliances chosen, adjusted or furnished by servant. 98: 305.  
 Liability of railroad for defects in cars of other companies. 98: 306.  
 Independent contractors. 98: 309.

**§ 12. — Care Required of Servant.**

Reasonable care. 98: 310.  
 Right to assume machinery safe and suitable. 98: 310.  
 Inspection. 98: 311.  
 Knowledge of defect. 98: 312.  
 — Does not imply knowledge of danger. 98: 313.

**§ 13. Care Required of Mine Owner.**

Reasonable care sufficient. 87: 561.  
 Reasonable care a question of fact. 87: 562.

Fact of injury as proof of negligence. 87: 563.

In providing safe place to work—Timbering. 87: 564.

— Ventilation. 87: 564.

— Inspection. 87: 565.

— Where life is endangered by emergency. 87: 565.

— Where servant is making his own place. 87: 566.

— Where servant is repairing dangerous place. 87: 567.

— In completed and opened portions of the mine. 87: 567.

In providing safe machinery and appliances—Best obtainable. 87: 568.

— Similar to that used in other mines. 87: 568.

— Effect of long-continued use of appliance. 87: 569.

In providing competent fellow-workers—Minors. 87: 569.

— Duty to investigate efficiency. 87: 569.

In prescribing rules. 87: 571.

Delegation of duty. 87: 571.

Contracts against liability for negligence. 87: 572.

**§ 14. Statutory Duties of Mine Owners to Promote Safety of Miners.**

Validity of statutes. 87: 584.

Effect upon common-law liability. 87: 585.

Effect of violation of statute. 87: 585.  
 Contributory negligence as defense. 87: 586.

Violation must be proximate cause of injury. 87: 587.

Provisions for props and timbering. 87: 588.

Provisions for ventilation. 87: 589.

Provisions for escapement shafts. 87: 590.

Provisions for hoisting machinery. 87: 591.

Provisions relating to mine boss. 87: 592.

Provisions for inspection. 87: 595.

Miscellaneous provisions. 87: 595.

**§ 15. Liability of Ship Owner for Injuries to Sailors,**

Seamen defined. 31: 805.

Applicability of laws governing master and servant. 31: 805.

Failure of officer to perform duty owing to seamen. 31: 805.

Wrongful discharge by master of vessel. 31: 806.

Unnecessary exposure to danger. 31: 807.

Cruelty and unreasonable severity of officers. 31: 807.

Acts of officers within scope of authority. 31: 807.

Acts of fellow-servants. 31: 808.

Who are fellow-servants in marine service. 31: 808.

### § 16. Liability for Injury While Voluntarily Performing Duty Outside of Employment.

General rule. 85: 622.

Application of the rule. 85: 623.

Upon unauthorized direction of fellow-servant. 85: 626.

### § 17. Warning and Instructing Servant.

Duty to warn and instruct servant employed in dangerous work. 1: 548-550.

### § 18. Fellow-servants.

Who are, 1: 31.

Who are not. 1: 32.

The fellow-servant rule. 75: 584.

Duty of mine owner to provide competent servants. 87: 561.

### § 19. Who are Vice-principals.

Definition and general principles. 75: 586.

Master's duties. 75: 591.

Master's liability. 75: 600.

Agent's generally. 75: 607.

Bridge-builders and carpenters. 75: 607.

Chain-gang boss. 75: 608.

Train conductors. 75: 608.

Elevator managers and instructors. 75: 611.

Servants generally. 75: 611.

Chief engineers. 75: 612.

Foremen. 75: 613.

Inspectors and repairers of machinery. 75: 621.

Car repairer foreman. 75: 622.

Managers of departments. 75: 624.

Superintendents. 75: 624.

Master mechanic of railroad. 75: 626.

Millwright repairing mill. 75: 626.

Mining boss or foreman. 75: 626.

Officer of ship. 75: 628.

Railroad employees. 75: 628.

Roadmaster. 75: 631.

Section-boss and track foreman. 75: 632.

Shippers. 75: 634.

Superintendent of road. 75: 634.

Switchman. 75: 637.

Telegraph operators. 75: 637.

Timber-yard man. 75: 638.

Train dispatcher. 75: 638.

Trainmaster. 75: 638.

Trestle builder. 75: 639.

Yardmaster. 75: 640.

### § 20. Same.

Foreman. 41: 94.

Train dispatcher. 41: 94.

Car inspector. 41: 94.

Authority to employ and discharge servants as test. 41: 94.

Section foreman. 41: 95.

### § 21. Assumption of Risk.

Basis of rule. 131: 437.

By continuing service after promise to repair when increased danger is not to be apprehended. 119: 436.

Risks of dangerous machinery. 119: 434.

### § 22. — By Employees in Mines.

General rule. 87: 573.

Risks ordinarily incident to mining. 87: 573.

— Negligence of fellow-servants. 87: 574.

Risks not ordinarily incident to mining. 87: 577.

— Duty to warn servant concerning. 87: 577.

— Negligence of mine owner. 87: 579.

— Where servant is working under superintendence of owner or foreman. 87: 582.

When service is involuntary. 87: 582.  
Knowledge of both defect and danger prerequisite. 87: 583.

### § 23. Promise to Repair Defective Machinery.

Effect on liability for injuries. 23: 385.

Right to continue service after promise. 23: 386.

Promise rebuts presumption of assumed risk. 23: 386.

Mere complaint without promise does not justify continuing in service. 23: 386.

Continuing in service after failure to make promised repairs bars recovery. 23: 387.

#### § 24. Rights of Servant Accepting Extrahazardous Duties.

Right to engage in dangerous business. 97: 885.

Duty to provide for safety of servant. 97: 885.

Assumption of risk and contributory negligence—General scope of doctrines. 97: 886.

— Fear of dismissal. 97: 892.

— Appreciation of danger. 97: 893.

— Judgment as to danger. 97: 894.

— Immediate direction of master. 97: 895.

— Method of doing work. 97: 895.

Obedying express orders—In general. 97: 896.

— Emergency commands. 97: 898.

— Positive and peremptory orders. 97: 898.

— Assurance of safety. 97: 899.

— Work beyond scope of employment. 97: 900.

#### § 25. Injury from Defect in Machinery Known to Servant, but Resulting from Master's Breach of Promise to Repair.

Promise to repair in general. 119: 434.

Sufficiency of notice to master. 119: 437.

To whom notice must be given. 119: 437.

Care required notwithstanding promise to repair. 119: 438.

Sufficiency of promise. 119: 438.

Reliance on fulfillment of promise. 119: 439.

Duration of service after promise. 119: 440.

Imminence of danger as affecting rule. 119: 441.

#### § 26. Assumption of Risk and Contributory Negligence.

Distinguished. 98: 314.

Effect of promise to repair. 98: 315.

As defenses—Assumption of risk. 98: 316.

— Contributory negligence. 98: 319.

#### § 27. Contributory Negligence.

By continuing service after promise to repair dangerous machinery. 119: 442.

Railroad employee occupying dangerous position. 33: 765.

How far servant may rely on superior knowledge of master concerning risks. 24: 320-323.

#### § 28. Youthful Servants.

Duty to warn and instruct. 1: 28.

Delegation of duty. 1: 29.

Duty to obey orders given by fellow-servants. 1: 29, 30.

#### § 29. Actions for Injuries.

Actions under statutes. 98: 324.

Pleading. 98: 324.

Evidence. 98: 321, 322.

#### § 30. — Evidence of Negligence.

Burden of proof. 98: 321.

Admissibility. 98: 322.

#### § 31. Liability for Injuries to Third Persons.

Liability for wanton act of servant. 133: 865.

Liability for injuries to third persons by acts outside of scope of employment. 133: 869.

Liability of railroad for acts of servants in frightening animals by emission of steam from engine. 133: 862-871.

#### § 32. — Existence of Relation.

Existence and termination in general. 22: 459.

Express contract not necessary. 22: 459.

Illustrations. 22: 460-462.

Contractors. 22: 463.

Volunteers. 22: 463.

#### § 33. — Acts for Which Master is not Liable.

True test master's liability. 54: 71.

Implied authority to perform particular acts. 54: 76.

Deviations or departures from employment. 54: 77.

Willful or malicious acts. 54: 85.

Criminal acts, torts and frauds. 54: 85.

Servants of carriers. 54: 89.

Independent contractors. 54: 91; 76: 384.  
 Servants of municipal corporations. 54: 92.  
 Servants of private corporations. 54: 92.  
 Criminal liability. 54: 93.  
 Joint liability of master and servant. 54: 93.

**§ 34. — Liability for Negligence of Independent Contractors.**

Who are independent contractors. 76: 382.  
 General rule of nonliability. 76: 384; 54: 91.  
 Nonliability where contractor has control, illustrated. 76: 389.  
 Collateral injuries, trespass and torts. 76: 392.  
 Relation of master and servant must exist. 76: 392.  
 Doctrine of respondeat superior inapplicable. 76: 395.  
 Contractor liable where he reserves control. 76: 396.  
 Master liable where work causes nuisance. 76: 399.  
 — Blasting in city. 76: 399.  
 — Nuisance unnecessarily committed. 76: 400.  
 Master liable where work is dangerous. 76: 401.  
 Master liable where work necessarily injures. 76: 402.  
 Master liable where his orders are precisely executed. 76: 403.  
 Master liable where his plans are followed. 76: 404.  
 Master liable for violation of his duty to public. 76: 404.  
 Master liable for violation of statutory or contract duty. 76: 408.  
 Master liable on acceptance or ratification. 76: 409.  
 Liability where master is a corporation. 76: 410.  
 Negligence in railroad construction. 76: 411.  
 Liability of municipal corporation. 76: 417.  
 Negligence in blasting. 76: 421.  
 Negligence in constructing buildings. 76: 422.  
 Negligence in erecting bridges. 76: 422.  
 Interfering with or obstructing highway. 76: 422.

Work on leased premises. 76: 423.  
 Withdrawing lateral support. 76: 424.  
 Work in mines. 76: 425.  
 Erecting scaffolds. 76: 425.  
 Negligence of stevedores. 76: 426.  
 Use of old walls in building. 76: 426.  
 Liability of contractor and subcontractors. 76: 427.

**§ 35. — Liability in Exemplary Damages for Acts of Servant.**

Servants for whose acts master is liable. 101: 733.  
 Distinction between corporate and individual masters. 101: 734.  
 Necessity that act be willful, wanton, malicious or grossly negligent. 101: 735.  
 Necessity that act be within scope of employment. 101: 737.  
 Ratification—Necessity. 101: 739.  
 Interference with funeral cortege. 101: 740.  
 Insults or indignities to customers. 101: 743.  
 False imprisonment or illegal search. 101: 744.  
 — On suspicion of being a shoplifter. 101: 745.  
 Sale of intoxicants to drunkard husband. 101: 750.  
 Libelous publications—Publisher's liability. 101: 752.  
 — Unchaste, reckless or grossly careless libels. 101: 756.  
 — Malice, where master is corporation. 101: 758.  
 — Ratification. 101: 758.  
 Assault and battery—In general. 101: 760.  
 — Necessity for authorization or ratification. 101: 762.  
 Collision on highway. 101: 763.  
 Negligent sale of poison or deleterious substance. 101: 765.  
 Trespass. 101: 767.  
 Trespass accompanied by assault. 101: 769-772.

**MASTER IN CHANCERY.**

Sales by. See Equity, § 9.

**MASTER MECHANIC.**

As vice-principal. See Master and Servant, § 19.

**MATCHES.**

As necessities of life. See Monopolies, § 1.



**MATERIALITY.**

Of alteration of instrument. See *Alteration of Instruments*, § 2.

**MAXIMS.**

Time does not run against the crown. See *Limitations*, § 7.  
Once a mortgage always a mortgage. See *Mortgages*, § 2.

**MAYHEM.**

**§ 1. General Note.**

What constitutes. 65: 771.  
Intent. 65: 774.  
Indictment. 65: 775.

**MEANDER LINES.**

When waters are boundaries. See *Boundaries*, § 3.

**MEANING OF WORDS.**

Parol evidence to explain. See *Evidence*, § 28.

**MECHANICS' LIENS.**

IN GENERAL, § 1.  
WHO ARE LABORERS, § 2.  
ON SEPARATE PROPERTY OF WIFE, § 3.  
ON PROPERTY IN ADDITION TO THAT ON WHICH WORK WAS PERFORMED OR MATERIALS FURNISHED, § 4.  
RIGHT TO LIEN ON FAILURE TO COMPLETE BUILDING WITHOUT FAULT OF OWNER, § 5.  
ASSIGNMENT OF LIEN, § 6.  
WAIVER BY TAKING NOTES OR SECURITY, § 7.

On homestead. See *Homestead*, § 3.  
Scire facias to enforce. See *Scire Facias*, § 1.

**§ 1. In General.**

For materials consumed in use such as board to workmen, fuel and lubricating oil not adding value to the property. 116: 756.  
Effect of stipulations in contract between builder and owner. 19: 699.  
Effect of death of owner before filing claim. 43: 778, 779.

**§ 2. Who are Laborers.**

In general. 58: 303, 306.  
Overseers, foremen and superintendents. 58: 306.  
Mechanics. 58: 307.  
Distiller. 58: 307.  
Teamster. 58: 307.  
Contractors. 58: 308.  
Architects. 58: 308.

**§ 3. On Separate Property of Wife.**

In general. 83: 517.  
Agency of husband. 83: 518.  
Estoppel against wife. 83: 520.  
Knowledge and consent of wife. 83: 522.  
Consent in writing—When necessary. 83: 524.

**§ 4. On Property in Addition to That on Which Work was Performed or Materials Furnished.**

Several disconnected houses on same lot. 65: 166.  
Work upon part of building or other structure. 65: 167.  
Separate structures intended for single use. 65: 168.  
Railways and their appurtenances. 65: 171.  
Mining claims. 65: 172.  
Irrigation ditches and works. 65: 173.  
Extension of existing plant or system. 65: 176.

**§ 5. Right to Lien on Failure to Complete Building Without Fault of Owner.**

Preservation of lien on abandonment of work. 43: 900.  
When work is completed. 43: 900, 901.  
Completion by owner after abandonment of work. 43: 902.  
Effect of contractor's failure to complete work. 43: 903.  
Recoupment of damages by owner. 43: 904.  
Destruction of building. 43: 905.

**§ 6. Assignment of Lien.**

Perfected liens. 49: 530.  
Assignment of right to lien. 49: 531.

**§ 7. Waiver by Taking Notes or Security.**

Note as payment of debt. 41: 761.  
Judgment for debt due. 41: 761.  
Taking note does not waive lien. 41: 762.  
Taking security. 41: 762-766.

**MEDICAL ATTENDANCE.**

Liability of master for attendance on servant. See *Master and Servant*, § 4.

**MEDICAL EXAMINATIONS.**

Power of boards of health to make. See *Health*, § 2.

**MEDICAL PRACTITIONERS.**

Degree of care and skill required of. See Physicians and Surgeons, § 1.

**MEDICINES.**

Liability for negligence in preparation or sale. See Druggists, § 1.

**MEETINGS.**

Of conspirators. See Conspiracy, § 1.  
Corporate meetings. See Corporations, § 30.  
— Right of preferred stockholder to vote at. See Corporations, § 19.  
Notice of directors' meetings. See Corporations, § 44.

**MEMORANDA.**

Addition of memoranda to writing as material alteration. See Alteration of Instruments, § 4.  
Of bid at auction sale. See Auctions and Auctioneers, § 6.  
Indorsed on commercial paper. See Bills and Notes, § 12.  
On deeds. See Deeds, § 3.

**MEMORY.**

Impeaching witness by showing want of. See Witnesses, § 14.

**MENDICANTS.**

As vagrants. See Vagrancy, § 2.

**MENTAL ANGUISH.**

As element of damages. See Damages, § 6.  
As element of damage for failure to send or deliver message. See Telegraphs and Telephones, § 7.

**MENTAL ATTITUDE.**

Reducing homicide to manslaughter. See Homicide, § 3.

**MENTAL CAPACITY.**

To commit crime. See Criminal Law, § 8.

**MERCANTILE AGENCIES.****§ 1. False Statements to or by.**

Liability of parties making false statements to commercial agency. 85: 383.  
Rights of parties relying on rating based on false statements. 85: 383.  
Duration of effect of statement. 85: 385.

**MERCHANDISE.**

As baggage. See Carriers, § 58.  
Regulation of bulk sales of. See Fraudulent Conveyances, § 6.

**MERCHANTS.**

Combinations between. See Monopolies, § 1.  
License of occupation. See Licenses, § 1.

**MERGER.**

Of offenses. See Conspiracy, § 1.  
Of corporations distinguished from consolidation. See Corporations, § 60.  
Of criminal offenses. See Criminal Law, § 5.  
Of estates. See Estates, § 1.  
Of mortgages in other estates. See Mortgages, § 11.  
Of trust estate. See Trusts, § 14.  
Of contract to convey in deed. See Vendor and Purchaser, § 1.

**MESSAGES.**

See Telegraphs and Telephones.  
Telegraphic messages as evidence. See Evidence, § 24.

**MICE.**

Liability of warehousemen for loss to goods from. See Warehousemen, § 6.

**MIDDLE NAMES.**

As part of name. See Names, § 3.

**MIDWIFERY.**

Practice in violation of law as criminal offense. See Criminal Law, § 1.

**MILITIA.**

Effect of martial law other than in time of war. See Riot, § 1.

**MILITIAMEN.**

Exemption from civil process. See Process, § 4.

**MILL-HOUSE.**

As building subject to arson. See Arson, § 1.  
Subject to burglary. See Burglary, § 1.

**MINES AND MINERALS.**

DISCOVERY OF MINERAL—IN GENERAL, § 1.  
— WHAT CONSTITUTES, § 2.  
— NECESSITY, § 3.  
— RIGHTS OF LOCATOR BEFORE DISCOVERY, § 4.  
MINERAL AND VEINS INCLUDED IN PATENT, § 5.  
WHAT CROSS-LODES ARE INCLUDED IN PATENT AND WHAT RIGHTS IN SUCH LODES, § 6.  
RIGHTS OF OWNER OF MINERALS AS AGAINST OWNER OF SURFACE, § 7.  
EFFECT OF SEVERANCE OF MINERALS AND SURFACE, § 8.  
PERFORMANCE OF ASSESSMENT WORK, § 9.  
ABANDONMENT AND FORFEITURE OF CLAIMS, § 10.  
WHAT CONSTITUTES COTENANCY IN MINES, § 11.

POSSESSION RIGHTS OF COTENANTS, § 12.  
 ACCOUNTING BY COTENANT IN POSSESSION, § 13.  
 OPERATION OF MINE BY COTENANT, § 14.  
 RESTRAINTS IMPOSED ON COTENANTS, § 15.  
 LIABILITY OF COTENANTS FOR ACTS OF OTHERS, § 16.  
 PARTITION OF MINES HELD BY COTENANTS, § 17.  
 ACTIONS BETWEEN COTENANTS, § 18.  
 MINING PARTNERSHIPS, § 19.  
 DEBRIS LAW, § 20.

Acquisition of title to mineral lands by adverse possession. See Adverse Possession, § 1.

Possession of surface as adverse possession of severed mineral estate. See Adverse Possession, § 12.

Effect of intermixture of ore, oil, gas, mineral belonging to different owners. See Confusion of Goods, § 2.

Coal mining near lands of another may be declared a crime. See Criminal Law, § 1.

Condemnation of land for mining. See Eminent Domain, § 4.

Removing mineral from mines as enjoined irreparable injury. See Injunction, §§ 2, 4.

Duty of mine owner to provide safe machinery and appliances for servants. See Master and Servant, § 8.

Care required of mine owner to avoid injury to miners by providing safe premises, tools and machinery. See Master and Servant, §§ 13, 14.

Mine boss as vice-principal. See Master and Servant, § 18.

### § 1. Discovery of Mineral—In General.

General purposes of federal law and difficulties in application to discoveries. 139: 155.

Provisions of federal law applicable. 139: 156.

Rights and estates acquired by completed location. 139: 157.

### § 2. — What Constitutes.

General rule. 139: 167.

Surface indications—Float, bunches and pockets and outcropping. 139: 173.

— Oil seepage, sandstone, shale and other geological formations. 139: 174.

Geological formation and experiences of particular district. 139: 177.

Rule in districts where blind lodes are found. 139: 179.

Richness of adjoining claims in aid of discovery. 139: 179.

Necessity for discovery of pay ore or gravel. 139: 181.

Effect of assays in ascertaining. 139: 183.

As question of fact. 139: 184.

Rule in contests between mineral claimants and nonmineral entrymen. 139: 184.

### § 3. — Necessity.

General rule. 139: 159.

Presumption from long-standing location. 139: 162.

Estoppel of locator to deny discovery. 139: 162.

Subsequent productiveness as evidence of discovery. 139: 162.

Local statutes governing time of sinking discovery shaft. 139: 164.

Basing two locations on one discovery. 139: 164.

Basing location of additional ground on discovery on abandoned location. 139: 165.

Sufficiency of discovery of one kind of mineral. 139: 165.

Sufficiency of one discovery for an association placer claim. 139: 165.

Right of land department to investigate alleged discoveries within national forests. 139: 166.

Discovery alone without other locatory act. 139: 167.

### § 4. — Rights of Locator Before Discovery.

Locator in possession without location. 139: 185.

What constitutes diligent prosecution of work. 139: 187.

Effect where two locators are on ground by consent. 139: 188.

Right to initiate location on land entered by, or in possession of, others. 139: 188.

Effect of return of surveyor general as to mineral or nonmineral character of land. 139: 196.

Transfer of location before discovery. 139: 199.

### § 5. Mineral and Veins Included in Patent.

Nature of mineral patent. 58: 263.

Conclusiveness of patent. 58: 264.

Right to follow vein beyond lines. 58: 265.

— End lines. 58: 266.

Classification of departures from ideal location. 58: 266.

- When side lines become end lines. 58: 267.
- Parallelism of end lines. 58: 268.
- Lodes entering at end and leaving at side. 58: 269.
- Lodes entering and leaving at side. 58: 271.
- Lodes leaving and re-entering lines. 58: 271.
- Lodes crossing only one line or perhaps neither line. 58: 271.
- § 6. What Cross-lodes are Included in Patent and What Rights in Such Lodes.**
- Cross or intersecting veins. 83: 41.
- Uniting veins. 83: 44.
- § 7. Rights of Owner of Minerals as Against Owner of Surface.**
- Extent and growing importance of the law. 135: 132.
- Implied right of surface owner to subjacent support. 135: 134.
- Extent of subjacent support which must be given. 135: 140.
- Right to surface support as dependent on phraseology of deed granting or reserving minerals. 135: 147.
- Waiver of right by surface owner and effect of negligence notwithstanding waiver. 135: 147-152.
- Persons liable for causing insufficient surface support. 135: 152.
- § 8. Effect of Severance of Minerals and Surface.**
- Severability of minerals and surface. 24: 554.
- Mode of effecting severance. 24: 554.
- Form of grant of minerals. 24: 554.
- Rights of parties on severance. 24: 554.
- Rights incident to grant of minerals. 24: 555.
- Right of surface owner to subjacent support. 24: 555.
- Right to support of surface controlled by contract. 24: 557.
- Grantee of minerals not liable for loss of springs caused by mining. 24: 557.
- Right of owner of minerals to space in which minerals are inclosed. 24: 557.
- § 9. Performance of Assessment Work.**
- Who may perform. 87: 408.
- Time for performance. 87: 408.
- Sufficiency of work done in general. 87: 409.
- Work outside of claim. 87: 410.
- Construction of buildings. 87: 410.
- Prospecting and discovery. 87: 410.
- Services as watchman. 87: 411.
- Work on one claim for benefit of all. 87: 411.
- Excuses for nonperformance—Ouster. 87: 412.
- Fraud and conspiracy. 87: 412.
- Issuance of patent. 87: 412.
- Resumption of work before relocation. 87: 414.
- § 10. Abandonment and Forfeiture of Claims.**
- Abandonment—Definition and general principles. 87: 403.
- What constitutes. 87: 404.
- Forfeiture—Definition and general principles. 87: 405.
- Noncompliance with federal statutes. 87: 406.
- With state and territorial statutes. 87: 407.
- With local rules and customs. 87: 407.
- To co-owner. 87: 407.
- Pleading abandonment or forfeiture. 87: 413.
- Evidence of abandonment or forfeiture. 87: 413.
- Burden of proving. 87: 414.
- Resumption of work before relocation. 87: 414.
- § 11. What Constitutes Cotenancy in Mines.**
- In general. 91: 854.
- Right to share in proceeds. 91: 854.
- Separate ownership of surface and mineral. 91: 854.
- Location in name of several. 91: 855.
- Prospecting agreements. 91: 855.
- Partnership in operation. 91: 857.
- Whether tenancy is joint or in common. 91: 857.
- § 12. Possession Rights of Cotenants.**
- Each entitled to entire mine. 91: 867.
- Possession of one inures to all. 91: 867.
- Possession by one adverse to others. 91: 867.
- Proof of ouster and adverse holding. 91: 867.
- Right of cotenant of mine to abandon it. 135: 893.

**§ 13. Accounting by Cotenant in Possession.**

Right to compel. 91: 871.

Basis of. 91: 875.

Items—Operating expenses. 91: 877.

— Services of operating tenant. 91: 878.

— Interest. 91: 878.

— Improvements. 91: 879.

Joinder of parties and actions in suit for accounting. 91: 879.

**§ 14. Operation of Mine by Cotenant.**

In general. 91: 868.

Liability for waste. 91: 868.

What constitutes waste. 91: 869.

Enjoining. 91: 869.

Use of workings to operate another mine. 91: 871.

**§ 15. Restraints Imposed on Cotenants.**Fiduciary nature of relation. 91: 858.  
Estoppel to assail common title. 91: 858.

Relocation by cotenant. 91: 858.

Acquisition of outstanding title—General rule. 91: 861.

— Purchase of cotenant's interest. 91: 862.

— Purchase of senior location. 91: 862.

— Between whom rule applies. 91: 862.

— Necessity for offer to contribute. 91: 863.

— Bona fide purchaser from cotenant holding outstanding title in trust for other tenants. 91: 864.

— Patent procured by one tenant. 91: 864.

**§ 16. Liability of Cotenants for Acts of Others.**

No implied agency. 91: 880.

Conveyance by metes and bounds. 91: 881.

Conveyance of cotenant's interest. 91: 881.

Leases and licenses. 91: 881.

Admissions. 91: 882.

Fraud. 91: 882.

Service of process. 91: 882.

**§ 17. Partition of Mines Held by Cotenants.**

Voluntary. 91: 884.

By legal proceedings. 91: 885.

— Mines subject to. 91: 885.

— Who may compel. 91: 886.

Whether mines are subject to partition. 91: 886.

— By sale. 91: 887.

Improvements on legal partition. 91: 887.

**§ 18. Actions Between Cotenants.**

Between cotenants in mines. 91: 883.

— For ouster of one. 91: 883.

Between cotenants and third persons. 91: 889.

**§ 19. Mining Partnerships.**

Not dissolved by death of partner. 79: 716.

**§ 20. Debris Law.**

In general. 30: 551.

Right of private individual to injunction. 30: 554.

Joinder of defendants in injunction suit. 30: 554.

Deposit of debris not authorized by law. 30: 555.

Custom cannot give right. 30: 556.

Inconvenience no ground for refusing injunction. 30: 557.

Dam for impounding mining debris. 30: 557.

**MINISTERIAL ACTS.**

Review of, on certiorari. See Certiorari, § 3.

**MINISTERIAL DUTIES.**

Mandamus to compel performance of. See Mandamus, §§ 4, 5.

**MISCEGENATION.**

Invalidity of miscegenous marriage. See Marriages, § 4.

**MISCONDUCT OF COUNSEL.**

Disbarment for. See Attorney and Client, § 3.

In argument. See Criminal Law, § 47.

At civil trials. See Trial, §§ 3, 4.

**MISCONDUCT OF JURY.**

Constituting ground for new trial. See New Trial, §§ 58, 60.

**MISFEASANCE.**

Liability of officers for. See Officers, § 14.

**MISREPRESENTATION.**

See Fraud.

**MISTAKE.**

Liability of abstractor for mistake due to ignorance or negligence. See Abstracts of Title, § 1.  
 As ground for cancellation in equity. See Cancellation of Instruments, § 4.  
 As ground for relief in equity. See Equity, § 4.  
 Revival of mortgage satisfied by mistake. See Mortgages, § 24.  
 In application of payment. See Payments, § 4.  
 Reformation of instruments containing. See Reformation of Instruments, § 5.  
 Revocation or cancellation of will by mistake. See Wills, § 19.

**MISTAKEN POSSESSION.**

As adverse possession. See Adverse Possession, § 5.

**MISTRIAL.**

For applause, laughter, hisses or remarks of spectators. See Criminal Law, § 48.

**MITIGATION.**

Of libel. See Libel and Slander, § 11.

**MITIGATION OF DAMAGES.**

For wrongful attachment. See Attachment, § 7.  
 Duty of injured person to lessen damages. See Damages, § 11.

**MOBS.**

See Riot.

Liability of carrier for injuries to passengers by. See Carriers, § 45.  
 Liability of carrier for delay caused by. See Carriers, § 13.

**MONEY.**

As baggage. See Carriers, § 58.  
 Judicial notice of. See Evidence, § 1.  
 Not subject to replevin. See Replevin, § 2.

**MONEY PAID.**

Right to recover overpayments. See Payment, § 3.  
 Recovery of taxes paid. See Taxation, § 17.

**MONOPOLIES.**

§ 1. What Contracts or Combinations Constitute.

In general. 74: 235.  
 Definition of trust. 74: 236.  
 Basis of doctrine of illegal trusts. 74: 238.  
 Contracts and combinations of manufacturers. 74: 241.  
 Combinations between carriers. 74: 249.  
 Contracts and combinations between dealers. 74: 255.

Combinations between insurance companies. 74: 259.

Combinations relating to patents. 74: 260.

Combinations of news gatherers. 74: 262.

Combinations of labor. 74: 264.

Necessaries of life. 74: 268.

— Coal, gas, matches, lumber and salt. 74: 268.

— Cotton bags, grain and milk. 74: 268.

— Alcohol and distilling products. 74: 268.

— Pipe for gas, water or sewer. 74: 269.

— Woodenware, sugar and envelopes. 74: 269.

— Fire alarm instruments. 74: 269.

— Blue stone. 74: 269.

— News, wire, cloth and cigarettes. 74: 269.

— Insurance, transportation and labor. 74: 269.

Defenses which are not maintainable. 74: 271.

**§ 2. Power of City to Grant.**

Power of city to grant monopoly for removal of garbage. 97: 688.

**MONUMENTS.**

Control of calls for monuments. See Boundaries, § 6.

**MORAL INSANITY.**

As defense for crime. See Criminal Law, § 8.

**MORAL OBLIGATION.**

As consideration for contract. See Contracts, § 6½.

**MORMONISM.**

Edmund's anti-polygamy law. See Bigamy, § 1.

**MORTGAGES.**

IN GENERAL, § 1.

ONCE A MORTGAGE ALWAYS A MORTGAGE, § 2.

EQUITABLE MORTGAGE, § 3.

BY PRE-EMPTORS AND HOMESTEADERS ON PUBLIC LANDS, § 4.

TO SECURE FUTURE ADVANCES, § 5.

DEED IN CONSIDERATION OF SUPPORT OF GRANTOR, § 6.

DESCRIPTION OF INDEBTEDNESS, § 7.

DESCRIPTION OF PROPERTY, § 8.

— GENERAL DESCRIPTION, § 9.

FIRE INSURANCE AS SECURITY FOR MORTGAGEE, § 10.

MERGER, § 11.

**DUTIES AND LIABILITIES OF MORTGAGEE IN POSSESSION, § 12.**  
**RIGHT OF MORTGAGEE TO RENTS AND TO SECURE THEIR PAYMENT, § 13.**  
**RIGHTS OF MORTGAGEE ON JUDICIAL OR PUBLIC SALE OF PROPERTY, § 14.**  
**REMEDIES OF MORTGAGEE AGAINST IMPAIRMENT OF SECURITY, § 15.**  
**ACTIONS, § 16.**  
**EFFECT OF BAR OF STATUTE OF LIMITATIONS, § 17.**  
**SALES UNDER POWER IN MORTGAGE OR TRUST DEED, § 18.**  
**— MUST BE FOR REASONABLE PRICE, § 19.**  
**WHO MAY NOT PURCHASE AT FORECLOSURE SALE, § 20.**  
**LITIGATION OF PARAMOUNT TITLE IN FORECLOSURE SUIT, § 21.**  
**WHO MAY REDEEM, § 22.**  
**WAIVER OR RELEASE OF EQUITY OF REDEMPTION, § 23.**  
**REVIVAL OF MORTGAGE SATISFIED BY MISTAKE, § 24.**

**See, also, Chattel Mortgages; Liens; Mechanics' Liens; Pledges.**  
**Pendency of foreclosure suit in state court as abatement of suit in federal court and vice versa. See Abatement and Revival, § 1.**  
**Foreclosure proceedings against unknown owners. See Absentees, § 2.**  
**Liability of abstractor for negligent omission to indicate existence of mortgage in abstract. See Abstracts of Title, § 1.**  
**Mortgage or deed of mortgaged property as color of title. See Adverse Possession, § 10.**  
**Foreclosure deed as color of title. See Adverse Possession, § 10.**  
**Mortgage of personal property. See Chattel Mortgages.**  
**Deeds for support of grantor. See Deeds, § 11.**  
**Of homestead. See Homestead, § 6.**  
**Of infants. See Infants, § 1.**  
**Of insane persons. See Insane Persons, § 4.**  
**Mortgage clauses in fire policies. See Insurance, § 12.**  
**Application of proceeds of insurance policy on mortgaged premises. See Insurance, § 43.**  
**Revenue stamps on. See Internal Revenue, § 1.**  
**Right of life tenant with power of disposal to mortgage the estate. See Life Estates, § 2.**  
**Duty of life tenant to pay interest on. See Life Estates, § 3.**  
**Estoppel of mortgagee to plead statute of limitations. See Limitation of Actions, § 14.**  
**Application of rule against perpetuities to mortgages. See Perpetuities, § 1.**  
**Of inchoate interest of settlor on public lands. See Public Lands, §§ 3, 4.**  
**Right of parties to mortgage to sue to quiet title. See Quieting Title, § 1.**  
**Of after-acquired property of railroads. See Railroads, § 4.**  
**Claims having priority over railroad mortgages. See Railroads, § 5.**  
**Reformation of. See Reformation of Instruments, § 1.**

**Scire facias to enforce. See Scire Facias, § 1.**  
**Right of purchaser at invalid foreclosure sale to subrogation. See Subrogation, § 4.**

### § 1. In General.

**Absolute deed as. 129: 1137.**  
**Validity of mortgage of after-acquired property. 109: 524.**

### § 2. Once a Mortgage Always a Mortgage.

**Origin, purpose and meaning of maxim. 131: 916.**  
**Equity of redemption as inseparable part of mortgage. 131: 918.**  
**To what transactions maxim applies. 131: 920.**  
**Agreements respecting equity of redemption made simultaneously with mortgage. 131: 922.**  
**Agreements respecting equity of redemption made subsequent to the mortgage. 131: 926.**

### § 3. Equitable Mortgage.

**What constitutes in general. 4: 696; 131: 914.**  
**Deposit of title deeds. 4: 697.**  
**Conditional sale. 4: 699.**  
**Agreement to execute mortgage. 4: 700.**  
**Defective mortgage. 4: 701.**  
**Statutory mortgage. 4: 702.**  
**Assignment of contract of purchase. 4: 703.**  
**Vendor's lien for unpaid purchase money. 4: 704.**  
**Registry acts. 4: 706.**  
**Deed absolute in form. 4: 707.**

### § 4. By Pre-emptors and Homesteaders on Public Lands.

**Pre-emptors. 52: 249.**  
**Homesteaders. 52: 252.**

### § 5. To Secure Future Advances.

**Validity. 116: 690.**  
**Must specify that future debts are to be secured. 116: 695.**  
**Must specify limit of sum to be secured. 116: 695.**  
**Must incorporate agreement to make advances. 116: 695.**  
**Priority when other liens attach before making mortgage. 116: 691.**  
**Priority when advances are made after notice of other liens. 116: 691.**

- Advances made without notice of subsequent liens. 116: 692.
- Notice of subsequent liens by record only. 116: 692.
- Marshaling securities. 116: 694.

#### § 6. Deed in Consideration of Support of Grantor.

Equitable mortgages or liens in the nature of mortgages. 130: 1041.

Trusts. 130: 1043.

Condition subsequent. 130: 1044.

Covenant. 130: 1046.

#### § 7. Description of Indebtedness.

Necessity for identification of debt. 49: 207.

Sufficiency of description. 49: 207.

Effect of uncertainty. 49: 207.

Past indebtedness. 49: 208.

Misdescription of notes. 49: 208.

Aider by reference to other instrument. 49: 208.

Description by reference to subject matter. 49: 208.

In trust deed. 49: 209.

#### § 8. Description of Property.

Errors peculiar to mortgages. 137: 252.

Without reference to political subdivisions, plats or accompanying documents—The rule. 137: 254.

— Illustrations of sufficient descriptions. 137: 255.

— Illustrations of insufficient descriptions. 137: 259.

By political subdivision—The rule. 137: 260.

— Illustrations of sufficient descriptions. 137: 261.

— Illustrations of insufficient descriptions. 137: 263.

By reference to plates or other documents. 137: 265.

Surplusage—Mode of treating. 137: 266.

Erroneous descriptions—Duty of court. 137: 267.

— Illustrations of harmless error. 137: 268.

#### § 9. — General Description.

Use of word "estate." 66: 59.

All one's estate. 66: 60.

Imparts notice. 66: 61.

#### § 10. Fire Insurance as Security for Mortgagee.

Classification of modes of securing mortgagee. 135: 743.

Insurance in name of mortgagee. 135: 744.

Insurance in name of mortgagor.

— In pursuance of agreement but without assignment. 135: 745.

— Assignment to mortgagee as collateral security. 135: 745.

— Making loss payable to mortgagee as his interest may appear but without mortgage clause. 135: 746.

— Mortgage clause. 135: 750-770.

#### § 11. Merger.

When it occurs. 99: 160.

When it does not occur. 99: 161.

— Intention in interest of mortgagee. 99: 162.

— Purchase of equity of redemption. 99: 163.

— Purchase at judicial sale. 99: 166.

— Assignment of mortgage. 99: 167.

— Intervening lien or encumbrance. 99: 168.

— Payment of mortgage debt by owner of fee. 99: 170.

#### § 12. Duties and Liabilities of Mortgagee in Possession.

Degree of care required. 4: 69.

Liability for rents and profits. 4: 70, 71.

#### § 13. Right of Mortgagee to Rents and to Secure Their Payment.

Right to rents. 27: 793.

Mortgagee's rights at common law. 27: 794.

Appointment of receiver for rents. 27: 794.

— Discretion of court. 27: 794.

— Only on good grounds. 27: 795.

— Provision in mortgage for. 27: 796.

— After decree. 27: 796.

— New Jersey and Michigan rules. 27: 797.

— Against first mortgagee in possession. 27: 798.

— After appointment of assignee in bankruptcy. 27: 798.

— Notice of application for. 27: 798.



# **§ 14. Rights of Mortgagee on Judicial or Public Sale of Property.**

Judicial sale—Proceeds represent the property. 88: 359.

Execution sale—When mortgage lien is senior. 88: 359.

— When mortgage lien is junior. 88: 360.

Probate sale. 88: 360.

Partition sale. 88: 361.

— Mortgage pending suit. 88: 362.

Public or quasi-public sale. 88: 362.

Tax sale. 88: 362.

Condemnation for public use—Mortgagee as owner. 88: 363.

— Right to the award. 88: 363.

— When award is paid into county treasury. 88: 364.

— When only part of property is condemned. 88: 365.

# **§ 15. Remedies of Mortgagee Against Impairment of Security.**

Injunction. 43: 432.

Trespass for waste or removal of fixtures. 43: 434.

Replevin for timber or fixtures. 43: 435.

Damages for impairment. 43: 435.

# **§ 16. Actions.**

Rights and remedies of mortgagor at common law. 7: 31-34.

Right of mortgagee to maintain an action at law to recover judgment on the debt. 73: 559.

Recitals in mortgage as evidence of debt. 112: 793.

# **§ 17. Effect of Bar of Statute of Limitations.**

Bar of debt as bar of mortgage. 95: 664, 665.

Trust deed. 95: 667.

Equitable mortgage. 95: 667.

Mortgage of land of married woman. 95: 668.

Power of sale in mortgage. 95: 668.

Deficiency judgment. 95: 668.

Reciprocal right of foreclosure and redemption. 95: 669.

Bar of mortgage as affecting debt. 95: 669.

# **§ 18. Sales Under Power in Mortgage or Trust Deed.**

Validity of power and of proceedings under. 92: 574.

Death of mortgagor. 92: 575.

Purchase by mortgage. 92: 576.

— Through third person. 92: 579.

Purchase by interested persons. 92: 581.

Effect of sale on equity of redemption. 92: 596.

Inadequacy of price. 92: 582.

Sales en masse or in parcels. 92: 585.

Postponement of sale. 92: 588.

Terms of sale. 92: 590.

Laches. 92: 592.

Personal supervision of sale by mortgagee or trustee. 92: 595.

Effect of defective sale. 92: 597.

Time to foreclose deed of trust. 136: 475.

# **§ 19. Must be for Reasonable Price.**

General rule. 103: 53.

Where deficiency judgment is sought. 103: 54.

Application of rule to chattel and land mortgages. 103: 56.

Distinction between private and public sale. 103: 56.

Effect of equity of redemption. 103: 56.

Effect of inadequacy of price. 103: 57.

# **§ 20. Who may not Purchase at Foreclosure Sale.**

Sheriffs, constables, commissioners and other officers authorized to make sales. 136: 789-793.

Executors and administrators. 136: 794-802.

Guardians. 136: 802-804.

Judges. 136: 805.

Trustees. 136: 805-809.

Mortgagees. 136: 810.

Pledges. 136: 811.

Assignees for creditors. 136: 812.

Attorneys. 136: 813-816.

Cotenants and others jointly interested. 136: 817.

Husbands and wives. 136: 817.

Parties to the action or proceeding. 136: 818.

# **§ 21. Litigation of Paramount Title in Foreclosure Suit.**

General rule that claimants of paramount title are not necessary parties. 68: 355.

Exceptions to the rule. 68: 358.

Litigation of tax titles. 68: 359.

**§ 22. Who may Redeem.**

Any party having an interest in the property. 21: 245.

Effect of illegal sale of equity of redemption. 21: 246.

Second mortgagee. 21: 246, 247.

Mortgagor without title. 21: 246.

Assignee of equity of redemption. 21: 246, 247.

Grantor in deed absolute in fact a mortgage. 21: 247.

Tenant in common or for years. 21: 248.

Heirs and devisees. 21: 248.

Sureties. 21: 248.

Necessity for compliance with statute. 21: 248, 249.

**§ 23. Waiver of Release of Equity of Redemption.**

In general. 55: 100.

Contemporaneous agreements. 55: 102.

Subsequent agreements. 55: 105.

Proof must be clear and convincing. 55: 109.

Relief from unfairness. 55: 109-111.

**§ 24. Revival of Mortgage Satisfied by Mistake.**

What constitutes discharge of mortgage. 5: 703.

When mortgage will be revived. 5: 703.

Enforcement of new mortgage as continuance of lien of prior one. 5: 705.

Mistake must be one of fact. 5: 706.

Intent of parties governs. 5: 706.

Clear evidence of mistake required. 5: 707.

**MOTIONS.**

To dissolve attachment. See Attachment, § 5.

To vacate judgment. See Judgment, § 15.

**MOTIVE.**

Admissibility of evidence of other offenses to show motive for crime. See Criminal Law, § 25.

**MULTIPLICITY OF SUITS.**

Prevention of. See Equity, § 6.

Enjoining. See Injunction, § 8.

**MULTI WILL.**

What constitutes and essentials. See Wills, § 8.

Revocation of. See Wills, § 18.

**MUNICIPAL BONDS.**

See Municipal Corporations, § 36.

**MUNICIPAL CORPORATIONS.**

POWERS, § 1.

POWER TO ESTABLISH AND REGULATE MARKETS, § 2.

POLICE POWER, § 3.

— TO REGULATE BUSINESS OF DEALING IN INTOXICANTS, § 4.

— TO PREVENT OR REGULATE USE OF PROPERTY FOR ADVERTISING BY BILLBOARDS OR OTHERWISE, § 5.

— TO PUNISH CRIMES, § 6.

RECORDS OF MEETINGS OF COUNCIL, § 7.

ORDINANCES, § 8.

VALIDITY OF CIVIL SERVICE LAWS, § 9.

OFFICERS, § 10.

— LIABILITY OF SURETIES ON OFFICIAL BONDS, § 11.

LEGISLATIVE CONTROL OVER PROPERTY OF CITIES, § 12.

WHAT CONSTITUTES "INDEBTEDNESS" PROHIBITED BY LAW, § 13.

REMEDIES OF TAXPAYER FOR WASTE OR MISAPPLICATION OF PUBLIC FUNDS AND OTHER ILLEGAL ACTS, § 14.

PUBLIC WORK—WHO ARE RESPONSIBLE BIDDERS, § 15.

ASSESSMENTS FOR LOCAL IMPROVEMENTS, § 16.

— COLLECTION, § 17.

— PURPOSES FOR WHICH ASSESSMENTS MAY BE IMPOSED, § 18.

— PERSONAL LIABILITY FOR ASSESSMENTS, § 19.

— ASSESSMENT OF PUBLIC PROPERTY, § 20.

STREETS AND SIDEWALKS, § 21.

— GRANT BY CITY OF RIGHT TO USE FOR PRIVATE PURPOSE, § 22.

— RIGHTS OF PUBLIC AND ABUTTING OWNER, § 23.

— LIABILITY OF ABUTTING OWNER, § 24.

— OBSTRUCTION OF STREET BY PRIVATE PERSON, § 25.

— WHAT ARE ADDITIONAL SERVITUDES, § 26.

— LIABILITY FOR CHANGE OF GRADE, § 27.

— VACATING OR DISCONTINUING, § 28.

LIABILITY FOR NEGLIGENCE, § 29.

— NEGLIGENCE OR MISCONDUCT OF OFFICERS OR AGENTS, § 30.

LIABILITY FOR TORTS NOT SANCTIONED BY CHARTER, § 31.

LIABILITY FOR NUISANCE, § 32.

LIABILITY FOR DEFECTS IN SEWERS, § 33.

INJURY FROM DEFECTS IN OR WANT OF REPAIR OF STREETS, § 34.

WHAT CORPORATIONS ARE LIABLE FOR INJURIES FROM DEFECTS IN

**STREETS AND PUBLIC PLACES, § 35.**  
**BONDS AND WARRANTS, § 36.**  
**— RIGHTS OF HOLDERS, § 37.**  
**EFFECT OF ALLOWANCE OR REJECTION OF CLAIM, § 38.**  
**ESTOPPEL TO CONTEST ILLEGAL CLAIMS OR EXPENDITURES, § 39.**  
**ACTIONS, § 40.**

See, also, Counties; Towns.

Adverse possession of streets, public parks and other public places. See Adverse Possession, §§ 1, 2.

Regulation of cemeteries. See Cemeteries, § 1.

Review of proceedings of city boards and officers on certiorari. See Certiorari, § 3.

Police power to make and enforce building regulations. See Constitutional Law, § 9.

Power of courts to review proceedings to determine election on qualification of members of council. See Courts, § 2.

Duty to guard electric wires. See Electricity, § 1.

Application of doctrine of estoppel to. See Estoppel, § 2.

Regulation of use, storage or transportation of explosives within city limits. See Explosives, § 1.

Liability to garnishment. See Garnishment, § 3.

Liability for spread of contagion. See Health, § 1.

Enjoining enforcement of void ordinance. See Injunction, § 3.

Persons concluded by judgment against city. See Judgment, § 40.

Power to impose license tax. See Licenses, § 2.

Applicability of statute of limitation to actions by. See Limitations of Actions, § 7.

Power of city to grant monopoly for removal of garbage. See Monopolies, § 2.

Power to declare what are public nuisances. See Nuisance, § 8.

Quo warranto against at instance of private person. See Quo Warranto, § 1.

Regulation of street railroads. See Street Railroads, § 1.

Taxation of property of. See Taxation, §§ 6, 12.

Pollution of waters by. See Waters and Watercourses, § 8.

Liabilities of cities supplying water to inhabitants. See Waters and Watercourses, § 13.

### § 1. Powers.

Power to manufacture gas and electric light for use on streets and sale to citizens. 30: 225.

### § 2. Power to Establish and Regulate Markets.

Delegation of legislative power. 23: 581.

Power to limit sales to market place. 23: 581.

Duty to provide market-houses. 23: 582.

Market privileges must be accessible to all on equal terms. 23: 582.

Changing location of market. 23: 582.

Delegation of power to private persons. 23: 582.

Regulation of sales at market. 23: 583.

### § 3. Police Power.

General nature of police power. 104: 638.

To regulate removal of garbage and grant monopolies for that purpose. 97: 688.

Over carcasses of dead animals. 97: 691.

To regulate use, storage or transportation of explosives within city limits. 108: 356-358.

### § 4. — To Regulate Business of Dealing in Intoxicants.

General nature of power. 114: 298.

Delegation of power from state. 114: 299.

Method of delegating power. 114: 299.

Limitation on delegated power. 114: 299.

Judicial control of exercise of power. 114: 300.

— Relation of ordinance to constitution and general laws. 114: 300.

— Construction of charter. 114: 302.

— Reasonableness of ordinance. 114: 303.

— Effect of invalidity of parts of ordinance. 114: 303.

### § 5. — To Prevent or Regulate Use of Property for Advertising by Billboards or Otherwise.

Power to prevent. 132: 92.

Power to regulate. 132: 93.

Maxims applicable. 132: 94.

### § 6. — To Punish Crimes.

Express legislative authority. 110: 149.

Inherent power. 110: 150.

Prohibiting acts prohibited by statute. 110: 155.

Effect of passage of general statute. 110: 155.

Ordinance imposing different penalty. 110: 156.

**§ 7. Records of Meetings of Council.**

Towns, cities and school districts. 13: 550.

Effect as evidence. 13: 551.

Power to amend. 13: 553.

**§ 8. Ordinances.**

Test of validity as denying equal protection of the laws. 123: 36-57.

**§ 9. Validity of Civil Service Laws.**

In general. 79: 560.

Fitness is not an illegal test. 79: 560.

Privileges and immunities not infringed. 79: 561.

Power of appointment. 79: 562.

Relieving veteran soldiers from examination. 79: 563.

Free speech not infringed. 79: 564.

Penalties for violation of the laws. 79: 564.

**§ 10. Officers.**

Liability to individuals for misfeasance or nonperformance of official acts. 95: 80-84.

**§ 11. — Liability of Sureties on Official Bonds.**

City clerks. 91: 568.

Supervisors, aldermen or trustees. 91: 572.

Inspectors and superintendents. 91: 573.

**§ 12. Legislative Control Over Property of Cities.**

In general. 35: 529.

Test of legislative authority. 35: 530.  
Grants or contracts cannot be impaired. 35: 531.

General control of property held for public purposes. 35: 533.

Control over revenues. 35: 534.

Property held for public purposes. 35: 536.

Property held in trust. 35: 538.

Franchises granted to municipality. 35: 539.

By dividing or destroying municipality. 35: 539.

**§ 13. What Constitutes "Indebtedness" Prohibited by Law.**

In general. 44: 230.

Form of debt immaterial. 44: 233.

Attempted evasion of law limiting indebtedness. 44: 233.

Character of debt. 44: 234.

Liabilities imposed by statute. 44: 234.

Involuntary or compulsory indebtedness. 44: 234.

Salaries of officers. 44: 236.

Claims payable out of special funds. 44: 237.

Warrants against existing funds: 44: 237.

Indebtedness against anticipated revenues. 44: 238.

Time when demand is to be paid. 44: 239.

Refunding new debt to replace old ones. 44: 240.

Consolidation of municipalities. 44: 241.

Debt due to municipality. 44: 241.

Time when debt must be taken into consideration. 44: 241.

Effect of violation of provisions limiting indebtedness. 44: 241.

Prohibitions are self-executing. 44: 242.

Notice of the law and facts. 44: 242.

False recitals in bonds. 44: 242.

Invalidity of debt in excess of limit. 44: 242.

**§ 14. Remedies of Taxpayer for Waste or Misapplication of Public Funds and Other Illegal Acts.**

In general. 2: 92.

Powers of municipality. 2: 92.

Legislative or discretionary powers. 2: 93.

Relation between municipality and taxpayer. 2: 93.

Purposes of taxation. 2: 94.

Right to remedy. 2: 95.

Proper parties complainant. 2: 96.

Resident taxpayers may sue. 2: 97.

Special instances of suits by taxpayers. 2: 98.

New York cases. 2: 99.

Other states following New York. 2: 100.

Subscriptions to aid railroads. 2: 101.

Other cases. 2: 102, 103.

Laches. 2: 104.

Miscellaneous. 2: 105.

**§ 15. Public Work—Who are Responsible Bidders.**

Duty to let contract to lowest responsible bidder. 50: 490.

Basis of determination. 50: 490.  
 Who are lowest bidders. 50: 492.  
 Proposals requiring security. 50: 493.  
 Remedies of bidders to enforce rights.  
 50: 494-497.

**§ 16. Assessments for Local Improvements.**

Assessments must be limited to benefits received. 68: 716, 717; 82: 457.

**§ 17. — Collection.**

Local improvement assessments must be collected in strict conformity to statute. 133: 929.  
 Nature of proceeding to collect improvement taxes. 133: 930.

**§ 18. — Purposes for Which Assessments may be Imposed.**

In general. 16: 371.  
 Illustrations. 16: 371.

**§ 19. — Personal Liability for Assessments.**

Necessity for strict conformity to statute. 133: 929.  
 Nature of proceeding to collect assessment. 133: 930.  
 Decisions denying personal liability. 133: 931.  
 Decisions affirming personal liability. 133: 936.  
 Where improvement is made under police power. 133: 939.  
 Where owner has agreed to pay for improvement. 133: 939.  
 Where a sale of the property would be against public policy. 133: 939, 940.

**§ 20. — Assessment of Public Property.**

Cases exempting public property. 33: 406.  
 Cases holding public property assessable. 33: 410.  
 School property. 33: 407.  
 Church property. 33: 408.  
 Cemeteries. 33: 411.  
 Collection of assessment. 33: 412.  
 Exemption of land owned by public from special taxes and assessments for local improvements. 132: 299-315.

**§ 21. Streets and Sidewalks.**

Extinguishment of street by nonuser and adverse possession. 14: 278-282.

**§ 22. — Grant by City of Right to Use for Private Purposes.**

Structures and buildings in general. 125: 346.  
 Railways, wires, poles and pipes. 125: 346.  
 Bridges and passageways over. 125: 347.  
 Hydrants, pumps and tanks. 125: 347.  
 Platforms, stairways and fences. 125: 348.  
 Stepping-stones, areaways and coal-holes. 125: 348.  
 Obstructions in general. 125: 348.  
 Loading and depositing goods on sidewalk. 125: 349.  
 Hack-stands. 125: 350.  
 Deposit of building materials. 125: 351.  
 Moving buildings. 125: 351.  
 Shade trees and grass plots. 125: 351.  
 Business—In general. 125: 352.  
 — Booths and stands. 125: 352.  
 — Shops and eating-houses. 125: 353.  
 — Lunch wagons. 125: 353.  
 — Scales. 125: 353.  
 Street fairs and carnivals. 125: 354.  
 Automobile racing. 125: 354.  
 Fireworks exhibit. 125: 354.

**§ 23. — Rights of Public and Abutting Owner.**

Rights of abutting owner. 125: 344.  
 — To use of street. 125: 344.  
 Grant of street for private purposes. 125: 345.  
 Sidewalk as part of street. 125: 345.

**§ 24. — Liability of Abutting Owner.**

Common-law rule. 115: 993.  
 — Where owner causes defect. 115: 994.  
 Constitutionality of statutes. 115: 994.  
 Construction of statutes. 115: 995.  
 Necessity for notice to owner to repair defects. 115: 996.

**§ 25. — Obstruction of Street by Private Person.**

Obstruction as nuisance. 1: 840.  
 Temporary and partial obstruction. 1: 840.  
 Necessary obstruction must be reasonable. 1: 841.  
 Displaying goods offered for sale. 1: 842.  
 Permanent structures. 1: 842.  
 Duty to bridge ditch across street. 1: 842.  
 Collection of crowds. 1: 843.  
 Pasturing cattle. 1: 843.  
 Railroad cars or trains. 1: 843.  
 Standing or fallen trees. 1: 843.  
 Funeral procession. 1: 843.  
 Street incapable of use as such. 1: 843.  
 Excavations. 1: 844.  
 Prescriptive right to obstruct. 1: 844.

**§ 26. — What are Additional Servitudes.**

Servitude defined. 106: 239.  
 Bicycle paths. 106: 239.  
 Market place. 106: 240.  
 Hydrants, water-tanks and pumping plants. 106: 240.  
 Removal of trees. 106: 241.  
 Practical appropriation of whole street. 106: 241.  
 Unauthorized use of easement. 106: 242.  
 Surface servitudes, railroads and side-tracks, etc. 106: 242-257.  
 Effect of change from original use to additional or increased use. 106: 258-260.  
 Telegraph, telephone and electric light systems. 106: 260.  
 Bridges, viaducts, trestles and embankments. 106: 265.  
 Underground servitudes. 106: 266.

**§ 27. — Liability for Change of Grade.**

Common-law doctrine. 30: 835.  
 Constitutional provisions. 30: 836, 837.  
 What constitutes damage. 30: 840.  
 Measure of damages. 30: 845.  
 Market value of property damaged. 30: 847.  
 Remedial statute not necessary to recovery. 30: 847.  
 Damages under statutes. 30: 848.  
 Elements of damage. 30: 849.  
 Measure of damage. 30: 850.  
 Miscellaneous. 30: 850.

**§ 28. — Vacating or Discontinuing.**

Power of legislature. 46: 493.  
 Power of city. 46: 494.  
 Exercise of power. 46: 494.  
 Reversion of fee to abutting owner. 46: 495.  
 Damages or compensation. 46: 496-498.

**§ 29. Liability for Negligence.**

Sidewalks, streets and highways. 12: 753.  
 Sewers and drains. 12: 754.  
 Bridges. 12: 754.  
 Acts of agents. 12: 754.

**§ 30. — Negligence or Misconduct of Officers or Agents.**

Test of municipal liability. 30: 376, 403.  
 Liability extends to municipal duties only. 30: 377.  
 Classification of cases of nonliability. 30: 378.  
 Errors in plan of work. 30: 379.  
 Classification of cases of nonliability. 30: 380.  
 In discharge of public duties. 30: 381.  
 Public duties voluntarily assumed. 30: 382.  
 Public duties imposed by charter. 30: 383.  
 Public duties extend to streets. 30: 384.  
 Liability for negligence with respect to streets. 30: 385.  
 — Defects in plan of improvement. 30: 387.  
 — Negligence and not injury is the test. 30: 388.  
 — Grading streets. 30: 389.  
 — Interference with surface water by grading. 30: 390.  
 — Diverting flow of surface water. 30: 390.  
 Liability for creating nuisance. 30: 395.  
 Schools and school property. 30: 398.  
 Fire department. 30: 398.  
 Waterworks. 30: 399.  
 Police department. 30: 401.  
 Jails and workhouses. 30: 402.  
 Hospitals and poorhouses. 30: 402.  
 Business enterprises. 30: 402.  
 Wharves and piers. 30: 403.  
 Test of liability is whether duty was municipal. 30: 403.  
 Torts. 30: 405.  
 — Ultra vires. 30: 405.

Wrongful acts which are not ultra vires. 30: 406.

Unauthorized wrongful acts. 30: 408.

Acts of contractors. 30: 411.

### § 31. Liability for Torts not Sanctioned by Charter.

General rule. 34: 25, 26.

Permitting nuisance on streets. 34: 27.

Acts of officers. 34: 27.

— Trespass and seizure of private property. 34: 27.

Pleading in actions to enforce. 34: 28, 29.

### § 32. Liability for Nuisance.

Liability of city for creating or maintaining a nuisance. 15: 845.

Granting right to obstruct street. 15: 845, 847.

Private action to enforce. 15: 846.

Obstructing navigation. 15: 846.

Erection and maintenance of pesthouse. 15: 847.

Allowing accumulations at sewer outlets. 15: 848.

Failure to remove nuisance. 15: 849.

### § 33. Liability for Defects in Sewers.

Failure to provide sewers or drains. 29: 737.

Defect in plan. 29: 737.

Negligent construction. 29: 739.

Duty to keep in repair. 29: 740.

Creating nuisance in constructing. 29: 741.

Collecting surface water. 29: 742.

Injury from open sewer. 29: 743.

### § 34. Injury from Defects in or Want of Repair of Streets.

Duty to furnish safe streets. 103: 258.

Liability for injuries from defective streets. 103: 260.

Care required in general. 103: 263, 264.

Duty to repair defects. 103: 263.

Degree of care required. 106: 264.

Care as dependent on topography of street. 106: 265.

Care as dependent on frequency of use. 106: 266.

Uses to which street must be fitted. 106: 266.

Care required of boulevard street. 106: 270.

Necessity that care extend to all portions of street. 106: 271.

Necessity for lights. 103: 272.

Care required where obstructions or excavations exist. 103: 273.

Duty to replace warning signal improperly removed. 103: 274.

Care required of persons using streets. 103: 274.

— Bicycle riders. 103: 275.

— Guest of driver. 103: 275.

— Blind pedestrian. 103: 276.

— Driver of blind horse. 103: 277.

Right to assume that street is safe. 103: 277.

Right of pedestrian to cross at any place. 103: 277.

Effect of previous knowledge of defective condition. 103: 277, 278.

Proximate cause of injury. 103: 279.

Notice to city of defective condition. 103: 280.

— What constitutes. 103: 281.

— As dependent upon officer to whom given. 103: 282.

— As dependent upon time defect has existed. 103: 282.

What constitutes defect or want of repair. 103: 283.

— Faulty construction. 103: 285.

— Latent defects in culverts or basins. 103: 285.

— Absence of guard-rails or lights. 103: 286.

— Depressions, ditches, excavations, holes, ruts. 103: 287.

— Poles, posts, stakes, hydrants. 103: 288.

— Piles, building material, earth or debris. 103: 258.

— Loose rocks or bricks. 103: 289.

— Loose or trailing electric wires. 103: 289.

— Ropes or wires strung across street. 103: 290.

— Snow and ice. 103: 290.

— Mud or water. 103: 293.

— Structures on street. 103: 293.

— Dangerous appliances or machines. 103: 293.

— Customary storage of vehicles on street. 103: 294.

— Obstructions near edge or outside of street. 103: 294.

### § 35. What Corporations are Liable for Injuries from Defects in Streets and Public Places.

General nature and power of municipal corporations. 108: 138.

Nature of streets and highways and duty toward them. 108: 139.

Where injury results from governmental act. 108: 140.  
 What are governmental, corporate or ministerial acts. 108: 142.  
 Acts benefiting public or municipality. 108: 142.  
 Special benefit to municipality. 108: 144.  
 Private benefit or profit to municipality. 108: 145.  
 Benefit to both municipality and public. 108: 145.  
 Distinction between omission and negligence. 108: 150.  
 Defective public places. 108: 150-166.  
 Municipal water and gas works. 108: 168.  
 Police and fire departments. 108: 170.  
 Bridges. 108: 171.  
 Gutters, drains and sewers. 108: 172.  
 Schoolhouses. 108: 173.  
 Parks. 108: 173.  
 Wharves and ferries. 108: 172.  
 City hall, prison and pound. 108: 173.  
 Cemetery. 108: 173.  
 Quarry and electric light plant. 108: 173.

### § 36. Bonds and Warrants.

When statute of limitations runs against city warrants. 8: 206.

### § 37. — Rights of Holders.

Negotiability. 51: 823.  
 What constitutes mere irregularity. 51: 823.  
 Exemption from operation of lis pendens. 51: 824.  
 Burden of proving good faith. 51: 824.  
 Necessity for validity of law authorizing. 51: 824.  
 City and officers must be de jure or de facto. 51: 825.  
 Implied authority to borrow money. 51: 827.  
 Implied power to issue bonds. 51: 830.  
 Notice of law giving power. 51: 831.  
 Notice of facts appearing on face of bonds. 51: 832.  
 Notice of public records. 51: 833.  
 Protection by public records. 51: 834.  
 Effect of recitals in bonds. 51: 835.  
 Recitals and statements which do not protect. 51: 837.  
 Conditions precedent—Test to determine what are. 51: 839.  
 Preliminary petition. 51: 839.  
 Election. 51: 844.  
 — Notice of. 51: 845, 846.

— Officers. 51: 847.  
 — Majority of votes cast. 51: 847.  
 — Recitals precluding denial of. 51: 848.  
 Ordinance or order directing bond issue. 51: 848.  
 — Omission to provide means of payment. 51: 849.  
 Purpose for which bonds may issue. 51: 849.  
 Form and contents of bonds. 51: 850.  
 — Date. 51: 850.  
 — Promise to pay. 51: 850.  
 — Denomination. 51: 851.  
 — Time and place of payment. 51: 851.  
 Signature of bonds. 51: 852.  
 Medium of payment. 51: 852.  
 Sealing. 51: 853.  
 Directions of statute as to time and manner of issuing. 51: 853.  
 Variance in description of payee. 51: 854.  
 Fraudulent and unauthorized delivery. 51: 854.  
 Application of proceeds. 51: 855.  
 Overissue. 51: 855.  
 Estoppel to deny validity. 51: 856.  
 Ratification of invalid bonds. 51: 859.  
 Recovery of money paid for void bonds. 51: 860.

### § 38. Effect of Allowance or Rejection of Claim.

In general. 55: 203.  
 Allowance of invalid claim. 55: 208.  
 Reconsideration of allowance. 55: 209.  
 Action upon disallowed claim. 55: 209.

### § 39. Estoppel to Contest Illegal Claims or Expenditures.

In general. 137: 358, 367.  
 Mere inaction of officers. 137: 368.  
 Issue of invalid certificates. 137: 369.  
 Errors in taxing or discharging tax. 137: 369.  
 Money received. 137: 370.  
 Denial of ordinance. 137: 370.  
 Unauthorized consent to judgment. 137: 372.  
 Breach of contract. 137: 372.  
 Unauthorized acts of officers. 137: 373.  
 Illegal exercise of existing power. 137: 374.  
 Contract under unconstitutional statute. 137: 375.  
 Where no power to contract exists. 137: 375.  
 Erroneous construction of law. 137: 376.



**§ 40. Actions.**

When statute of limitations begins to run in favor of city. 136: 476-479.

**MUNICIPAL COURTS.**

Authority to punish contempt. See Contempt, § 4.

**MUNN AGAINST ILLINOIS.**

Evolution and diminution of doctrine announced in that case. See Carriers, § 2.

**MURDER.**

See Homicide, § 1.

**MUSICAL INSTRUMENTS.**

Exempt from execution. See Exemptions, § 7.

**MUTILATING WILL.**

Revocation by. See Wills, § 18.

**MUTILATION OF DEAD BODIES.**

Damages for. See Dead Bodies, § 1.

**MUTUAL AID SOCIETIES.**

See Beneficial Associations.

**MUTUALITY.**

Of option to purchase land. See Vendor and Purchaser, § 3.

**MUTUAL LIFE INSURANCE.**

Law applicable to. See Beneficial Associations, § 2.

**MUTUAL WILL.**

What constitutes and essentials. See Wills, § 7.

**NAMES.**

Change of names of parties to writings. See Alteration of Instruments, § 2.  
Deposit in bank in assumed name. See Banks and Banking, § 3.  
Corporate names. See Corporations.  
Deed in fictitious name. See Deeds, § 4.  
Signatures. See Signatures.  
Trade names. See Trademarks and Trade Names.

**§ 1. What Constitutes a Name.**

General rule. 132: 563.  
History and origin of the rule. 132: 564.

**§ 2. Idem Sonans.**

Definition. 100: 322.  
No general rule of pronunciation. 100: 323.

Variation in first letter. 100: 323.

Final "s" added. 100: 324.

Final "e" added. 100: 325.

Sounded final letter omitted or added. 100: 325.

Letters with similar sound used interchangeably. 100: 325.

Vowels of diphthong transposed. 100: 327.

Names terminating with "son." 100: 327.

Variants with different number of syllables. 100: 327.

Variant accentuation. 100: 328.

Local pronunciation. 100: 328.

Foreign names. 100: 329.

Application of doctrine—In general. 100: 330.

— To default judgments. 100: 331.

— To tax proceedings. 100: 336.

— To criminal proceedings. 100: 337.

— To records and indexes constituting constructive notice. 100: 338.

How question may be raised. 100: 340.

When evidence of pronunciation is admissible. 100: 341.

Province of court and jury. 100: 342.

Alphabetical list of names held to be idem sonans. 100: 344-350.

Alphabetical list of names held not idem sonans. 100: 350-354.

**§ 3. Proceedings Against Persons by Their Initials or by Less or Other Than Their Full Christian Names.**

Middle names or initials. 132: 566.

Abbreviations. 132: 569.

Derivations and corruptions. 132: 570.

Assumed names. 132: 571.

Names in common use. 132: 572.

Initials in general. 132: 573.

Single letters as full Christian names. 132: 578.

Initials as abbreviations of Christian names. 132: 578.

Prefixes. 132: 579.

Suffixes. 132: 579.

**NARCOTICS.**

See Druggists.

**NARROW CHANNEL.**

Duty of vessels navigating. See Collision, § 1.

**NARROW GAUGE.**

Change of narrow gauge road to standard gauge as additional servitude. See Rail-roads, § 3.

**NATIONAL BANKS.**

State taxation of. See Taxation, § 10.

**NATIONAL FORESTS.**

Discovery of minerals within. See Mines and Minerals, § 3.

**NATURAL CONSEQUENCES.**

Of negligent acts as proximate cause of injury. See Negligence, § 10.

**NATURAL GUARDIANS.**

See Guardian and Ward, § 2.

**NAVIGABLE WATERS.**

WHAT WATERS ARE NAVIGABLE, § 1.

TEST OF NAVIGABILITY, § 2.

RIPARIAN RIGHTS, § 3.

RELATIVE RIGHTS OF STATE AND RIPARIAN OWNERS, § 4.

TITLE TO LANDS UNDER WATER, § 5.

ACCRETION, ALLUVION AND AVULSION, § 6.

LAW OF ACCRETIONS APPLICABLE TO ISLANDS, § 7.

APPORTIONMENT OF ACCRETION, § 8.

POLLUTION BY DEBRIS, § 9.

PURPRESTURES, § 10.

REMEDIES FOR OBSTRUCTION, § 11.

Non-navigable waters. See Waters and Watercourses.

As boundary lines. See Boundaries, § 3.

State regulation of. See Commerce, § 1.

Right to fish in. See Fish, § 2.

**§ 1. What Waters are Navigable.**

Term "navigable waters" defined. 126: 710.

Common-law rule. 126: 711.

Civil-law doctrine. 126: 715.

Power of legislature to declare. 126: 717.

**§ 2. Tests of Navigability.**

Navigability in fact. 126: 717; 131: 757.

Necessity that waters be capable of use for transportation. 136: 720.

— Capacity and not extent of use. 126: 722.

— Usefulness for boating or fishing. 126: 723.

Capacity for mere floatage as distinguished from navigation. 126: 725.

— Logs, rafts and timber. 126: 726.

— Where artificial means must be used. 126: 728.

— Where floatable capacity is only for short seasons. 126: 729.

Necessity that waters be fit for navigation naturally without engineering improvements. 126: 730.

Effect of shallow places, waterfalls and other obstructions. 126: 731.

Necessity for terminus at each end of body of water. 126: 731.

Effect of waters having been meandered or returned by government officers as navigable. 126: 732.

Lakes, marshes and bayous. 126: 732.

Tests of navigability. 131: 757.

**§ 3. Riparian Rights.**

What waters are navigable. 19: 227.

Rights of littoral and riparian owners on navigable waters. 19: 231.

Rights of littoral proprietors to flats. 19: 233.

Right to accretions. 19: 234.

Effect of repeal of statute declaring stream navigable. 19: 234.

Right to ice. 19: 235.

**§ 4. Relative Rights of State and Riparian Owners.**

Ancient and modern doctrine. 127: 41.

Right of access including right to construct wharfs and piers. 127: 47.

Right to divert waters. 127: 55.

Accretion and reliction—In general. 127: 57.

— To islands. 127: 58.

Shores and banks. 127: 60.

**§ 5. Title to Lands Under Water.**

Tide and other submerged lands. 53: 289.

Common-law rule. 53: 290.

What waters are navigable. 53: 292.

Trust under which title is held. 53: 293.

— In favor fishing. 53: 293.

— In favor of riparian owners. 53: 294.

— In favor of commerce and navigation. 53: 294.

Right of state to alienate its title. 53: 297.

Congressional regulation of use of lands. 53: 299.

Wisconsin rule. 68: 693.

## § 6. Accretion, Alluvion and Avulsion.

Accretion defined. 35: 307.  
 Requisites of accretion by alluvion. 35: 307.  
 Rights of riparian owner. 35: 308.  
 Passes by conveyance of land. 35: 310.  
 Apportionment among adjoining owners. 35: 311.  
 Avulsion. 35: 311.  
 Islands and accretions thereto. 35: 312.

## § 7. Law of Accretions Applicable to Islands.

Accretions to islands in navigable waters. 72: 280; 35: 312.  
 Elementary rules governing accretions. 72: 281.  
 Accretions to islands. 72: 282.  
 Apportionment of accretions. 72: 283.  
 Erosion and re-formation over same area. 72: 284.  
 Government survey lines and newly formed lands. 72: 285.  
 What constitutes an island. 72: 286.

## § 8. Apportionment of Accretions.

Water frontage, not side lines, the first consideration. 122: 982.  
 Actual shore, not meander lines, the basis of computation. 122: 982.  
 Accretion to river banks. 122: 982.  
 Accretion to shores of lakes. 122: 984.  
 Accretions to shores of bay or cove. 122: 986.

## § 9. Pollution by Debris.

Deposit of debris or waste from factories in or near stream so that it is carried to lands of riparian owners. 30: 551-557.

## § 10. Purprestures.

Obstructions in general. 69: 273.  
 Wharves. 69: 273.  
 Piers, cribs and rafts. 69: 275.  
 Remedies for abatement. 69: 276.

## § 11. Remedies for Obstruction.

Indictment and information. 57: 693.  
 Injunction at suit of private individual. 57: 695.  
 Private suit for damages. 57: 696-701.

## NAVIGATION.

Condemnation of land for. See Eminent Domain, § 4.  
 Rules of. See Collision.  
 State regulation of. See Commerce, § 1.

## NECESSARIES.

Right of wife to procure. See Husband and Wife, § 15.  
 Contracts of infants for. See Infants, § 1.  
 Contracts of insane persons for. See Insane Persons, § 4.  
 What are necessities of life within meaning of anti-trust law. See Monopolies, § 1.

## NE EXEAT.

NATURE OF WRIT, § 1.  
 PREREQUISITES TO ISSUANCE OF WRIT, § 2.  
 DEMANDS AND ACTIONS WHICH WILL SUSTAIN, § 3.  
 PROCEEDINGS TO PROCURE, § 4.  
 See, also, Arrest; Bail.

### § 1. Nature of Writ.

A prerogative writ in England. 118: 989.  
 An ordinary process in America. 118: 989.  
 Abolished in some jurisdictions. 118: 989.  
 As writ of right. 118: 990.

### § 2. Prerequisites to Issuance of Writ.

In general. 118: 990.  
 Existence and maturity of debt. 118: 990.  
 Certainty of amount of demand. 118: 990.  
 Departure of defendant from state or country or removal of property. 118: 991.

### § 3. Demands and Actions Which will Sustain.

Equitable and legal demands. 118: 991.  
 Suits for an accounting. 118: 992.  
 Divorce and alimony. 118: 993.  
 Miscellaneous suits and demands. 118: 993.

### § 4. Proceedings to Procure.

Courts issuing. 118: 994.  
 Parties plaintiff and defendant. 118: 994.  
 Manner of making application. 118: 994.  
 Contents of affidavits. 118: 995.

Filing affidavits. 118: 995.  
Filing bond. 118: 996.

### NEGLECT.

ORDINARY CARE, § 1.  
DILIGENCE REQUIRED TO PRESERVE HUMAN LIFE, § 2.  
ACTS IN EMERGENCIES, § 3.  
FRIGHTENING ANIMALS, § 4.  
CONDITION OF PREMISES, § 5.  
INJURY TO CHILD, § 6.  
RIGHT TO RECOVER WHERE THERE IS NO PRIVACY, § 7.  
PERSONS LIABLE, § 8.  
MANUFACTURERS LIABILITY TO THIRD PERSONS, § 9.  
PROXIMATE AND REMOTE CAUSE, § 10.  
CONTRIBUTORY, § 11.  
— CHILDREN, § 12.  
INTOXICATION AS CONTRIBUTORY NEGLIGENCE, § 13.  
IMPUTED NEGLIGENCE, § 14.  
CONCURRENT NEGLIGENCE, § 15.  
COMPARATIVE NEGLIGENCE, § 16.  
EVIDENCE, § 17.  
ADMISSIBILITY OF EVIDENCE OF FAMILY TIES AND OBLIGATIONS OF PLAINTIFF, § 18.  
PRESUMPTION OF DUE CARE, § 19.  
PRESUMPTION OF NEGLIGENCE FROM ACCIDENT RESULTING IN PERSONAL INJURY, § 20.  
SAME, § 21.

Liability of abstractor of titles for negligence or want of skill. See Abstracts of Title, § 1.

Injuries from blasting on adjoining lands. See Adjoining Land Owners, § 3.

Injuries by or to animals. See Animals, §§ 9, 10.

In delivering promissory note. See Bills and Notes, § 3.

As bar to suit to cancel writing. See Cancellation of Instruments, § 6.

Limitation of carrier's liability for. See Carriers, §§ 10, 18.

Presumption of negligence from accident resulting in injury to passenger. See Carriers, § 33.

Presumed from falling of passenger elevator. See Carriers, § 55.

Care required of owners of passenger elevators. See Carriers, § 56.

Liability of carrier for loss or injury to baggage. See Carriers, § 63.

Liability of charitable institutions for negligence of servants or agents. See Charities, § 4.

In signing contract without knowing its contents. See Contracts, § 11.

Liability of corporate officers for. See Corporations, § 38.

Liability of county boards and officers for misfeasance or nonperformance of duties. See Counties, § 3.

Damages for negligent injuries. See Damages.

Liability of druggists for. See Druggists, § 1.  
Care required of electric companies. See Electricity, § 1.

Care and skill required of administrator. See Executors and Administrators, § 9.

Liability of executor or administrator to third persons for negligence. See Executors and Administrators, § 14.

Liability of estate for negligence of executor or administrator. See Executors and Administrators, § 15.

Of persons keeping, using or storing explosives. See Explosives, § 1.

Liability for setting out fire or preventing extinguishment of fire. See Fires, § 1.

Liability for communication of disease. See Health, § 1.

In use of public highways. See Highways, § 9.

In use of highway by automobiles. See Highways, § 10.

Liability of homestead for debt created by negligence. See Homestead, § 3.

Negligent homicide. See Homicide, §§ 10, 11.

Liability of husband for negligence of wife. See Husband and Wife, § 19.

Innkeeper's liability for injury to guest or for loss or injury to his goods. See Innkeepers, §§ 3, 4.

Liability of insane person for. See Insane Persons, § 5.

Liability of saloon-keeper for acts of drunkard. See Intoxicating Liquors, § 2.

Civil liability of judicial officers for official acts. See Judges, § 2.

Of attorney as ground for vacating judgment. See Judgment, §§ 17, 18.

As bar to equitable relief against judgment. See Judgment, § 20.

Liability of landlord for injury to tenant or third persons from dangerous premises. See Landlord and Tenant, §§ 28-30.

Liability of master for injuries to servant from defective methods, machinery or places of work. See Master and Servant, §§ 7-27.

Liability of master for injuries inflicted by servants and independent contractors. See Master and Servant, §§ 31-35.

Liability for giving false ratings. See Mercantile Agencies, § 1.

Liability of city for. See Municipal Corporations, §§ 29, 30.

Liability of notaries for negligence. See Notaries, § 1.

Liability of firm for torts of partner. See Partnership, § 12.

Liability of parent for negligent or vicious acts of child. See Parent and Child, § 4.

Care required of physicians and surgeons. See Physicians and Surgeons, § 1.

Liability of physicians and surgeons for negligence and malpractice. See Physicians and Surgeons, § 2.

Care required of pledgees. See Pledges, § 3.

Liability of principal for acts of agent. See Principal and Agent, §§ 13-17.

Of creditor relieving surety. See Principal and Surety, § 4.

Liability of receivers for. See Receivers, § 5.

As bar to suit in equity to reform writing. See Reformation of Instruments, § 4.

Liability of register of deeds for. See Registers of Deeds, § 1.

Release of claim for. See Release, § 1.

Liability of sureties for personal injuries inflicted by sheriffs and constables. See Sheriffs and Constables, § 6.

Joint liability for. See Torts, § 1.  
As bar to relief for misrepresentation in sale of land. See Vendor and Purchaser, § 10.  
Of cold storage companies. See Warehousemen, § 3.  
Of warehousemen or their servants. See Warehousemen, § 6.  
Of water and irrigation companies. See Waters and Watercourses, §§ 13, 14.  
Injuring timber. See Woods and Forests, § 1.

### § 1. Ordinary Care.

What constitutes ordinary care in a given vocation. 136: 222, 223.

### § 2. Diligence Required to Preserve Human Life.

Carriers of passengers. 77: 26.  
Street railroads. 77: 28.  
Electric companies. 77: 29.  
Persons using explosives. 77: 29.  
Persons working on scaffolds over thoroughfares. 77: 80.

### § 3. Acts in Emergencies.

Removal of goods from warehouse to prevent impending destruction. 136: 243.

### § 4. Frightening Animals.

Liability for injury caused by frightening animals by noises caused in the operation of steam engines. 133: 862-871.

### § 5. Condition of Premises.

Dark passageways and unguarded openings. 14: 435.  
Persons liable for unsafe condition of premises. 14: 435.  
Duty and liability of land owner to persons coming on his premises and injured by defects therein. 31: 524, 525.

### § 6. Injury to Child.

Care required of parents. 49: 406, 407.  
Contributory negligence of child. 49: 408.  
Imputed negligence of parent or guardian. 49: 413.  
Negligence as cause of injury. 49: 415, 426.  
Trespassing children. 49: 416.  
— Unguarded premises and turntables. 49: 417, 418.  
Dangerous machinery. 49: 419.  
Accidents on highways and railroads. 49: 421.

Wells, excavations, pools and the like. 49: 423.

Acts and omissions constituting negligence. 49: 426.

### § 7. Right to Recover Where There is No Privity.

Doctrine of nonliability. 100: 192.  
Modification of doctrine—Inherently dangerous articles. 100: 194.  
— Where there is fraud or concealment. 100: 195.  
— Where there is invitation to use dangerous property. 100: 196.  
Firearms and ammunition. 100: 196.  
Oil, gasoline, lamps, drugs and toilet articles. 100: 197.  
Unwholesome food and vicious horse. 100: 198.  
Diseased animals. 100: 199.  
Tools, machinery and appliances. 100: 199.  
Premises and structures. 100: 200.  
Carriers. 100: 201.  
Written instruments, certificates and the like. 100: 202, 203.

### § 8. Persons Liable.

Liability of lessor railroad for negligence of lessee. 58: 148-156.

### § 9. Manufacturer's Liability to Third Persons.

As dependent on doctrine of negligence. 111: 701.  
Distinction between ordinary negligence and that which is imminently dangerous to life. 111: 702.  
Distinction between ordinary duty and contractual duty. 111: 703.  
Based on fraudulent representations or concealment. 111: 708.  
Distinction between fraud and negligence. 111: 710.  
Effect of acceptance of article or structure, by person for whom it is made, as satisfactory. 111: 712.  
Effect of accompanying directions for use of article. 111: 713.  
Drugs and the like. 111: 713.  
Food. 111: 714.  
Machinery, furniture and passenger elevators. 111: 715.  
Explosives. 111: 716.

### § 10. Proximate and Remote Cause.

Proximate cause of injuries by or to animals. See Animals, § 10.

- Of injury to passenger on street-car. *See* Carriers, § 41.  
 Of injury by fire. *See* Fires, § 1.  
 Legal theory of casual connection. 36: 807.  
 Statement of the general rule. 36: 808, 812.  
 Various forms of general expression. 36: 809.  
 Test is that result might have been foreseen. 36: 810.  
 Precise form of injury need not have been foreseen. 36: 810.  
 Time or distance not decisive tests. 36: 811.  
 All positive consequences of wrongful act. 36: 811.  
 Vagueness of proposed rules. 36: 811.  
 General principles enumerated. 36: 812.  
 Liability for tort depends on duty to plaintiff. 36: 813.  
 Modification of rules in case of dangerous articles. 36: 814.  
 Necessary connection between act and injury. 36: 815.  
 — Breach of statutory duty. 36: 817.  
 — Omission of railroad to give signals. 36: 817.  
 — Obstruction of highway by train. 36: 817.  
 — Excessive speed of train. 36: 818.  
 — Violation of law. 36: 818.  
 Unlawful and negligent acts distinguished. 36: 819.  
 Liability determined by operation of normal physical laws. 36: 821.  
 Growth of vegetation where its presence may cause injury. 36: 823.  
 Spread of fire. 36: 823.  
 Illness resulting from wrongful acts. 36: 828.  
 Negligent treatment of drunken person. 36: 829.  
 Predisposition to disease no defense. 36: 829.  
 Causing incapacity by supplying intoxicants. 36: 830.  
 Causing spread of disease. 36: 831.  
 Injuries to and by animals. 36: 831–835.  
 Injuries to children. 36: 835.  
 Defects in highways. 36: 836.  
 Intervening causes and irresponsible agencies. 36: 836.  
 — Accident or act of God. 36: 838.  
 Intervening efficient cause or responsible agencies. 36: 840.  
 Intervening willful tort. 36: 843.  
 Repetition of slander. 36: 844.  
 Wrongful act of third person induced by slander. 36: 845.  
 Intervening negligent acts. 36: 845.  
 Contributory negligence. 36: 846.  
 Negligent or willful misstatements. 36: 846.  
 Acts prompted by uncontrollable impulse. 36: 847.  
 — Choice between dangerous alternatives. 36: 847.  
 — Choice between disagreeable alternatives. 36: 848.  
 — Desire to save life. 36: 849.  
 — Desire to preserve property. 36: 849.  
 Injuries to business. 36: 850.  
 Functions of court and jury in determining proximate cause. 36: 851.
- § 11. Contributory.**  
 Of employer of abstractor. *See* Abstract of Title, § 1.  
 Of shipper of livestock. *See* Carriers, § 32.  
 Projecting part of body out of car window as. *See* Carriers, § 51.  
 Of injured passenger. *See* Carriers, § 41.  
 Of person injured by electric wires. *See* Electricity, § 1.  
 As question for jury. 8: 849.  
 When it does not bar recovery. 8: 850.  
 Acts constituting, illustrations. 8: 850, 851.  
 What constitutes voluntary exposure to unnecessary danger. 95: 379–381.
- § 12. — Children.**  
 Negligence of parent not imputed to child. 14: 590.  
 Age at which child is charged with negligence. 14: 590.  
 Determination of degree of discretion of child. 14: 593.  
 Province of jury to determine responsibility. 14: 594.  
 Trespassing children. 14: 595.  
 Turntable case doctrine. 14: 595.  
 When children are chargeable with. 81: 875–877.
- § 13. Intoxication as Contributory Negligence.**  
 Intoxication which did not contribute to the injury. 25: 39.  
 No excuse for negligence of others. 25: 40.

Recklessness toward intoxicated person. 25: 42.  
 Intoxication as evidence of negligence. 25: 43.  
 Evidence of intoxication. 25: 44.  
 Contributory negligence in not preventing intoxication. 25: 44.  
 Care due to intoxicated person. 25: 44.

**§ 14. Imputed Negligence.**

Repudiation of doctrine. 110: 279.  
 Relation of persons involved. 110: 279.  
 Gross or willful negligence. 110: 279.  
 Persons engaged in same common purpose. 110: 280.  
 Several occupants of same vehicle. 110: 280.  
 Companions walking along street. 110: 280.  
 Rower and occupant of boat. 110: 281.  
 Parent and child—Negligence of child. 110: 281.  
 — Negligence of parent. 110: 281-286.  
 Teacher and pupil. 110: 286.  
 Husband and wife. 110: 286.  
 Master and servant. 110: 287.  
 Servant and fellow-servant. 110: 287.  
 Guests at hotel. 110: 288.  
 Bailor and bailee. 110: 289.  
 Consignor and consignee. 110: 289.  
 Carrier and passenger. 110: 289.  
 Stage-coach and driver. 110: 290.  
 Passenger and fellow-passenger. 110: 291.  
 Driver of hack, automobile or other vehicle and passenger or companion—Negligence of driver. 110: 291.  
 — Payment of compensation for ride. 110: 292.  
 — Public or private conveyance. 110: 292.  
 — Invitation of driver. 110: 292.  
 — Control over driver. 110: 293.  
 — Care required of passenger. 110: 293.  
 — Collision with cars or trains. 110: 295.  
 — Woman riding at man's invitation—Husband and wife. 110: 296.  
 — Parent and child. 110: 297.  
 — Master and servant. 110: 297.  
 — Fellow-servants. 110: 297.  
 — Infirm person in care of driver. 110: 298.

**§ 15. Concurrent Negligence.**

Joint and several liability. 16: 250.  
 Illustrations. 16: 251-255.  
 Contribution between persons jointly liable. 16: 255-257.

**§ 16. Comparative Negligence.**

In general. 81: 924-928.

**§ 17. Evidence.**

Inadmissibility of evidence of repairs after accident as proof of prior negligence. 18: 307-310.  
 Burden of proof. 133: 871.  
 Presumption of negligence where there is no evidence showing who was at fault. 6: 792-794.

**§ 18. Admissibility of Evidence of Family Ties and Obligations of Plaintiff.**

General rule. 85: 835.  
 Number and ages of children. 85: 837.  
 Evidence that plaintiff has a family. 85: 839.  
 Actions for injuries to child. 85: 839.  
 Error in admitting evidence cured by instructions. 85: 839.

**§ 19. Presumption of Due Care.**

In general. 116: 109.  
 Application of rule to children. 116: 114.  
 Effect of rule as to burden of proving contributory negligence. 116: 115.  
 How ordinarily overcome. 116: 117.  
 Where there is no eye-witness to accident. 116: 118.  
 Where there is direct evidence indicating negligence. 116: 120.  
 Where person is killed while walking on railroad. 116: 121.  
 Where accident happens at railroad crossing. 116: 121.  
 — Presumption regarding duty to look and listen. 116: 125.  
 — Rule where, had deceased looked and listened, he would have heard and seen the approaching train. 116: 126.

**§ 20. Presumption of Negligence from Accident Resulting in Personal Injury.**

Nature of the presumption. 113: 987.  
 General rules creating presumption. 113: 988-992.

Necessity that circumstances create reasonable probability of existence of negligence. 113: 993.

Necessity that defendant controlled agency causing accident. 113: 996.

Necessity that accident would not ordinarily have happened in the exercise of due care. 113: 997.

Necessity that cause of accident be not obscure. 113: 998.

Effect of existence of several possible causes of accident one of which would not make defendant liable. 113: 998.

Where both parties were under obligation to exercise equal care. 113: 999.

Where accident may have resulted from negligence of injured person. 113: 999.

Where accident could be accounted for as act of God or inevitable accident. 113: 999.

Application of doctrine of *res ipsa loquitur*. 113: 999.

Effect of contractual relations between parties. 113: 1003.

—— Relation of master and servant. 113: 1006.

Falling walls, buildings, tools and material. 113: 1010.

Falling rock or debris in mining region. 113: 1012.

Fallen, broken or exposed live wires. 113: 1012.

Explosions. 113: 1014.

Sudden starting or abnormal action of dangerous machinery. 113: 1016.

Injury to pedestrian from collision, run-away and defects in streets or public places. 113: 1017.

Injuries to passengers on railroads. 113: 1020.

—— From manner of operating cars. 113: 1022.

—— Explosion of boiler or collapse of bridge. 113: 1023.

—— Boarding or leaving train. 113: 1023.

—— Jolts, jerks, lurches and sudden starts or stops. 113: 1023.

—— Collision, derailment or parting of train. 113: 1025.

—— Injury to person not a passenger. 113: 1028.

—— Fall or giving way of equipment or car. 113: 1028.

—— Fall or breaking of trolley or wires. 113: 1029.

Injuries on passenger elevator. 113: 1030.

Passengers on stage, livery or boat. 113: 1031.

#### § 21. Same.

In general. 6: 792-794.

Resulting from mismanagement or misconstruction. 20: 490.

Breaking down or overturning of passenger train. 20: 490.

Derailed car or broken rail. 20: 491.

Bursting of locomotive boiler. 20: 492.

Collision between street-cars. 20: 492.

Stage-coach losing wheel or upsetting. 20: 492.

Bursting of boiler of steamboat. 20: 493.

Defects in bridges, falling buildings and other objects. 20: 493.

Cases not within the rule. 20: 494, 495.

### NEGLIGENT HOMICIDE.

See Homicide, § 11.

### NEGOTIABILITY.

Of certificate of deposit. See Banks and Banking, § 6.

Of commercial paper. See Bills and Notes, § 6.

### NEGROES.

Civil rights of. See Civil Rights, § 1.

Protection from discrimination. See Constitutional Law, § 21.

### NEW CAUSE OF ACTION.

Amendments setting up. See Pleading, § 2.

### NEW COUNTIES.

See Counties, § 2.

### NEW PARTIES.

On death of party pending suit. See Abatement and Revival, § 4.

To conspiracy. See Conspiracy, § 1.

To civil actions. See Parties, § 2.

### NEW PROMISE.

Reviving debt discharged by bankruptcy. See Bankruptcy, § 2.

Reviving debt barred by statute. See Limitation of Actions, § 15.

### NEWSPAPERS.

Publications constituting contempt. See Contempt, § 3.



Criminal laws infringing liberty of the press.  
See Criminal Law, § 1.  
Libels in. See Libel and Slander, § 4.  
Combinations between news gatherers restraining competition. See Monopolies, § 1.

**§ 1. Contracts Against Public Policy.**

In general. 93: 905.  
Sale of support or influence of paper. 93: 905.  
Indemnity for libel. 93: 908.  
Affecting competition for, or procurement of, public printing. 93: 908.  
Sale of newspaper and goodwill of business. 93: 909.  
Contracts with news agencies. 93: 910.  
For Sunday advertising. 93: 911.

**NEW TRIAL.**

Grounds for new trial in criminal cases and effect of grant of new trial. See Criminal Law, §§ 57-62.  
Mandamus to compel grant or refusal of. See Mandamus, § 6.

**§ 1. Grounds.**

For remarks or conduct of counsel other than during argument. 100: 696.

**NEXT FRIEND.**

Right to prosecute appeal. See Appeal and Error, § 2.  
Of infant litigant. See Infants, § 6.

**NEXT OF KIN.**

Right to contest will. See Wills, § 22.

**NIGHT LETTER.**

Night telegram as evidence. See Telegraphs and Telephones, § 24.

**NIGHT-TIME.**

See Burglary, § 1.

**NIGHT-WALKERS.**

Right to arrest without warrant. See Arrest, § 1.

**NITRO-GLYCERINE.**

Liability of persons keeping or using. See Explosives, § 1.

**NOISE.**

As nuisance. See Nuisance, § 7.

**NOMENCLATURE.**

Names of persons. See Names.

**NOMINAL DAMAGES.**

Statute of limitations applicable where cause of action for nominal damages would ripen into right to actual damages. See Limitation of Actions, § 12.

**NOMINAL PARTIES.**

Right to appeal. See Appeal and Error, § 2.

**NOMINATIONS.**

See Appointment.  
Of candidates for public office. See Elections, § 3.

**NONDELIVERY.**

See references under Delivery.

**NONFEASANCE.**

Liability of officers for. See Officers, § 14.

**NONFORFEITURE.**

Of life policy. See Insurance, § 26.

**NON-NEGOTIABLE PAPER.**

Liability of indorsers. See Bills and Notes, § 15.

**NONRESIDENTS.**

Jurisdiction of courts over. See Absentees, § 1.

**NONSUPPORT.**

As vagrancy. See Vagrancy, § 5.

**NONUSER.**

As abandonment. See Abandonment, § 3.  
Forfeiture of franchise of corporation for. See Corporations, § 71.  
Of easement. See Easements, § 10.

**NOTARIES.**

**§ 1. Liability for Negligence.**

In general. 82: 380.  
For libel. 82: 380.  
For failure to protest and give notice of dishonor. 82: 381.  
In taking acknowledgments. 82: 382.  
Criminal liability. 82: 384.  
Liability of sureties. 82: 385.  
Measure of damages. 82: 388.

**§ 2. Liability of Sureties.**

Liability of sureties on official bonds. 91: 579.

**NOTES.**

See Bills and Notes.

**NOTICE.**

Of substitution of personal representatives on death of party pending suit. See Abatement and Revival, § 4.  
As essential element of adverse possession. See Adverse Possession, § 6.  
Of proceedings to expel members of associations. See Associations, § 2.  
Of motion to dissolve attachment. See Attachment, § 5.

To attorney imputed to client. See Attorney and Client, § 10.  
 Of auction sale. See Auctions and Auctioneers, § 6.  
 Of dishonor of foreign bill of exchange. See Bills and Notes, § 17.  
 Effect of notices in railroad tickets limiting carrier's liability. See Carriers, § 38.  
 Of directors' meeting. See Corporations, § 44.  
 Of election. See Elections, §§ 3, 4.  
 Telegram as evidence of. See Evidence, § 24.  
 Of default of principal. See Guaranty, § 6.  
 Facts of which *lis pendens* gives notice. See *Lis Pendens*, § 1.  
 To master of defect in machinery or premises. See Master and Servant, § 9.  
 To agent as notice to principal. See Principal and Agent, § 9.  
 Of default to surety. See Principal and Surety, § 4.  
 Of importance of telegram as element fixing damages for delay or nondelivery. See Telegraphs and Telephones, § 6.  
 By telephone. See Telegraphs and Telephones, § 9.  
 Possession of land as notice of rights of possessor. See Vendor and Purchaser, § 5.  
 Of appropriation of water. See Waters and Watercourses, § 1.

### § 1. In General.

Validity of notice given by telephone. 127: 554.  
 Computation of time of publication. 102: 685.

### NOTICE TO QUIT.

Who must give, to whom given, service, proof of service and waiver. See Forcible Entry and Detainer, § 3.

### NOTORIETY.

As essential element of adverse possession. See Adverse Possession, § 6.

### NOTORIOUS ADULTERY.

Offense of living in. See Adultery, § 1.

### NOTORIOUS FORNICATION.

What constitutes. See Fornication, § 2.

### NOVATION.

Distinguished from accord. See Accord and Satisfaction, § 2.  
 Acceptance of novation as waiver of vendor's lien. See Vendor and Purchaser, § 9.

### NOVELTY.

Of trademark or name. See Trademarks and Trade Names, § 1.

### NUISANCE.

NATURE AND ELEMENTS OF PRIVATE NUISANCE, § 1.  
 INJUNCTION AND ABATEMENT, § 2.

### PERSONS LIABLE, § 3.

LIABILITY OF LAND OWNER FOR NUISANCE WHICH HE DID NOT CREATE, § 4.

NUMBER OF RECOVERIES FOR NUISANCE, § 5.

STATUTE OF LIMITATIONS, § 6.

PUBLIC NUISANCES—WHAT ARE, § 7.

— POWER OF CITY TO DECLARE WHAT ARE, § 8.

— ABATEMENT, § 9.

— PURPRESTURES, § 10.

Bees as nuisance. See Animals, § 2.

May be declared criminal. See Criminal Law, § 1.

Keeping or storing explosives as. See Explosives, § 1.

Power of boards of health to abate. See Health, § 2.

Liability of city for. See Municipal Corporations, § 32.

Purprestures. See Navigable Waters, §§ 10, 11.

### § 1. Nature and Elements of Private Nuisance.

In general. 118: 869.

Intent and malice. 118: 869.

Negligence as an element of liability. 118: 870.

Care and precaution against causing injury. 118: 870.

Similar annoyances or injuries to others. 118: 870.

Locality, circumstances and incidents. 118: 870.

Acts authorized by law, ordinance or license. 118: 872.

Acts in violation of law. 118: 872.

### § 2. Injunction and Abatement.

In general. 118: 878.

Equitable relief not a matter of right. 118: 879.

Injury must be irreparable. 118: 881.  
 Relief must be sought with reasonable promptness. 118: 882.

When nuisance tends to promote public convenience. 118: 883.

Offensive character of nuisance. 118: 884.

### § 3. Persons Liable.

In general. 118: 872.

In actions at law for damages. 118: 873.

Protest against nuisance not necessary. 118: 877.

Continuance of nuisance. 118: 877.

Liability of land owner for nuisance which he did not create. 86: 521-523.

Criminal responsibility of corporation maintaining. 133: 777.

**§ 4. Liability of Land Owner for Nuisance Which He Did not Create.**

Basis of liability for nuisance. 86: 509.

Grantor and grantee. 86: 510.

— Notice to grantee. 86: 512.

— Grantee's liability for injuries resulting. 86: 514.

Lessor and lessee—Lessor's liability. 86: 515.

— Notice to lessor. 86: 516.

— Wrongful acts of tenants for which owner is liable. 86: 517.

— Tenant's liability. 86: 519.

— Joint and several liability. 86: 520.

Grantees and lessees of railways. 86: 520.

Mortgagees, heirs and devisees. 86: 521.

**§ 5. Number of Recoveries for Nuisance.**

General principles. 128: 959.

When nuisance will support but one recovery. 128: 962.

When repeated recoveries may be had. 128: 966.

**§ 6. Statute of Limitations.**

Permanent nuisance. 20: 176.

— What constitutes. 20: 176.

Permanent structure becoming nuisance after erection. 20: 177.

Taking property without compensation. 20: 177, 178.

Continuous nuisance. 20: 178.

Prescriptive right does not accrue. 20: 178, 179.

**§ 7. Public Nuisances—What are.**

General nature. 107: 199.

Distinguished from purpresture. 107: 204.

Distinguished from private nuisance. 107: 205.

Who are the "public." 107: 206.

What constitutes public nuisance per se. 107: 207.

Effect of intent on creation or maintenance. 107: 209.

Necessity that acts or things complained of be the proximate cause. 107: 209.

Necessity that acts or things complained of be subsisting and not prospective. 107: 209.

Necessity for annoyance or injury. 107: 210.

Sufficiency of injury or annoyance. 107: 210-216.

Matters diminishing annoyance resulting from act or thing. 107: 217.

Matters excusing act or thing complained of. 107: 218.

License or authority to do act complained of. 107: 219.

Matters affecting morals or good order. 107: 225.

Matters affecting peace and quiet, property or general rights as a member of a community—Noisy acts or occupations. 107: 230.

— Spite fences. 107: 232.

— Unsightly buildings, hospitals, billboards, pesthouses and resorts. 107: 232.

— Matters enhancing fire risk. 107: 233.

— Cattle infected with contagion. 107: 234.

— Weeds. 107: 235.

— Flooding land. 107: 235.

— Interfering with fishing rights. 107: 235.

Matters affecting health or comfort—Fouling water. 107: 236.

— Noxious fumes. 107: 237, 240.

— Unsanitary tenements or houses. 107: 238.

— Selling diseased meat. 107: 238.

— Garbage or dead animals. 107: 238.

— Persons afflicted with contagion. 107: 238.

— Pesthouse in settled locality. 107: 239.

Plants, works or stables producing noxious odors or fumes. 107: 240.

— Smelters. 107: 241.

— Pig-pens, tanneries and slaughterhouses. 107: 241.

— Garbage plants. 107: 242.

— Fertilizer plants. 107: 242.

— Smoke nuisance. 107: 242.

Keeping dangerous animals. 107: 243.

Dangerous eaves-troughs. 107: 243.

Spring-guns. 107: 243.

Explosives and fireworks. 107: 243.

Cars loaded with explosives. 107: 245.

Oil refineries, gas wells or leaks. 107: 245.

Permanent obstructions or encroachments in streets. 107: 245.

— Bridges, viaducts and approaches. 107: 246.

- Barbed wire and other fences. 107: 247.
- Railway tracks, roundhouses, etc. 107: 247.
- Flagstaffs and swinging doors. 107: 248.
- Booths and stands. 107: 248.
- Awnings, overhanging roofs and bay windows. 107: 248.
- Loading platforms. 107: 248.
- Removal of earth. 107: 248.
- Temporary obstructions and encroachments. 107: 248.
- Passing handbills. 107: 249.
- Coasting. 107: 249.
- Fast trains. 107: 249.
- Blockade. 107: 249.
- Parades. 107: 249.
- Engines. 107: 249.
- Mortar-beds and building materials. 107: 250.
- Fairs. 107: 250.
- Speech-making. 107: 250.
- Log piles. 107: 251.
- Frightening horses. 107: 251.
- Excavations or openings. 107: 251.
- Obstructing navigation. 107: 251.
- Structures on public grounds other than streets. 107: 252.

**§ 8. — Power of City to Declare What are.**

- In general. 120: 372.
- What may be declared a nuisance. 120: 375.
- What may not. 120: 376.
- Conclusiveness of declaration. 120: 378.

**§ 9. — Abatement.**

- Right of abatement without suit. 124: 595.
- Right of one not specially injured. 124: 597-602.
- Destruction of dangerous animals. 124: 602.
- Removal of obstructions in highways and streams. 124: 603.
- Abatement when no right of action exists. 124: 607.

**§ 10. — Purprestures.**

- What constitutes. 69: 271.
- Authority to erect. 69: 276.
- Remedies for abatement. 69: 276-281.

**NUMBER OF WITNESSES.**

- Required to attest will. See Wills, § 8.
- Right of court to limit. See Witnesses, § 1.

**NUNC PRO TUNC.**

Nunc pro tunc entry of judgment. See Judgment, § 10.

**NUNCUPATIVE WILLS.**

Nature and essentials. See Wills, § 10.

**OATH.**

Of grand juror. See Grand Jury, § 1.  
Definition of oath as test of competency of child witness. See Witnesses, § 4.

**OBJECTION.**

To separation of jury. See Trial, § 9.

**OBJECTIONS TO EVIDENCE.**

At civil trial. See Trial, § 7.

**OBLIGATION OF CONTRACTS.**

Impairment of. See Constitutional Law, § 15.

**OBLITERATING WILL.**

Revocation by. See Wills, § 18.

**OBSCENITY.**

Obscene matter in mails. See Post Offices, § 3.

**OBSTRUCTING JUSTICE.**

Right to resist arrest. See Arrest, § 2.

**OBSTRUCTIONS.**

On highways. See Highways, § 4.  
Of public street by private person. See Municipal Corporations, § 25.  
Constituting permanent nuisance. See Nuisance, § 7.  
Of private road. See Private Roads, § 2.

**OBTAINING PROPERTY BY FALSE PRETENSE.**

See False Pretences, § 1.

**OCCUPATION TAXES.**

See Licenses, §§ 1, 5.

**OFFER.**

Of bribe. See Bribery, § 1.

**OFFICERS.**

NATURE AND INCIDENTS OF PUBLIC OFFICE, § 1.  
WHAT CONSTITUTES OFFICIAL ACT, § 2.  
IN WHOSE NAME DEPUTY MUST ACT, § 3.  
WHO ARE DE FACTO OFFICERS, § 4.  
STATUS OF DE FACTO OFFICER, § 5.  
ABANDONMENT OF PUBLIC OFFICE, § 6.  
ACCEPTANCE OF OFFICE AND RESIGNATION, § 7.

LOSS OF ONE OFFICE BY ACCEPTING ANOTHER, § 8.  
 REMOVAL FOR CAUSE, § 9.  
 COMPENSATION, § 10.  
 EXEMPTION OF EARNINGS FROM EXECUTION OR ATTACHMENT, § 11.  
 PROCEEDINGS TO TRY TITLE TO OFFICE, § 12.  
 CIVIL LIABILITY, § 13.  
 LIABILITY TO PRIVATE INDIVIDUALS FOR MISFEASANCE OR NONPERFORMANCE OF OFFICIAL DUTY, § 14.  
 CRIMINAL LIABILITY FOR NEGLECT OF DUTY, § 15.  
 WHEN BOND TAKES EFFECT, § 16.  
 ALTERATION OR FORGERY OF BOND, § 17.  
 DEFECTS IN BONDS WHICH DO NOT RELIEVE SURETIES, § 18.  
 IRREGULARITIES WHICH DO NOT RELIEVE SURETIES, § 19.  
 LIABILITY OF SURETIES, § 20.  
 SAME, § 21.  
 OBLIGATION OF SURETIES STRICTLY CONSTRUED, § 22.  
 LIABILITY OF SURETIES AFTER EXPIRATION OF TERM OF OFFICE, § 23.  
 LIABILITY OF SURETIES WHERE SPECIAL OR ADDITIONAL BONDS ARE REQUIRED, § 24.  
 SURETIES LIABLE FOR OFFICIAL ACTS ONLY, § 25.  
 LIABILITY OF SURETIES FOR PERFORMANCE OF DUTIES IMPOSED AFTER EXECUTION OF BOND, § 26.  
 LIABILITY OF SURETIES FOR JUDICIAL ACTS, § 27.  
 LIABILITY OF SURETIES FOR LOSS OF FUNDS WITHOUT FAULT, § 28.  
 ACTIONS AGAINST OFFICERS, § 29.  
 — EVIDENCE, § 30.

Alteration of instruments by public officers.  
 See Alteration of Instruments, § 3.  
 Right of legislature to give discharged soldiers preference for public office. See Army and Navy, § 1.  
 Subject to bribery. See Bribery, § 1.  
 Review of removal from office on certiorari. See Certiorari, § 3.  
 Clerks of court. See Clerks of Court.  
 Liability of sureties on bonds of clerks of court. See Clerks of Court, § 2.  
 Right to appoint to office. See Constitutional Law, § 2.  
 Of corporations. See Corporations, §§ 37-39.  
 Taking or demanding illegal fees. See Extortion, § 3.  
 Personal liability of judicial officers for official acts. See Judges, § 2.  
 Liability of sureties on bonds of judges. See Judges, § 3.  
 Mandamus against ministerial officers or boards. See Mandamus, § 5.  
 Of cities. See Municipal Corporations, § 10.  
 Quo warranto at instance of private person. See Quo Warranto, § 1.  
 Replevin against. See Replevin, § 3.  
 Liability of sheriffs and constables for misfeasance or nonperformance of official duties. See Sheriffs and Constables, § 4.

## § 1. Nature and Incidents of Public Office.

Definition of office. 63: 181.  
 As exercise of portion of sovereign power. 63: 183.  
 Source must be sovereign. 63: 184.  
 Not created by grant or contract. 63: 185.  
 As part of administration of government. 63: 186.  
 Duties must be public and prescribed by law. 63: 188.  
 Duties must be continuous. 63: 189.  
 Officer must be appointed or elected. 63: 190.  
 Incidents of office—Oath. 63: 191.  
 — Bond, commission and emoluments. 63: 192.  
 Distinguished from employment. 63: 192, 193.

## § 2. What Constitutes Official Act.

Officers in general. 6: 130.  
 Sheriffs and constables. 6: 131, 132.

## § 3. In Whose Name Deputy must Act.

In general. 106: 825.  
 Name of principal. 106: 826.  
 Conflict of decision in same state. 106: 828.  
 Deputy acting in name of principal alone. 106: 829.  
 When may act in own name only. 106: 830.

## § 4. Who are De Facto Officers.

Definitions. 140: 165.  
 Color of title. 140: 166.  
 Invalid or irregular election or appointment. 140: 171.  
 Want of power in electing or appointing. 140: 173.  
 Ineligibility. 140: 175.  
 Failure to qualify. 140: 176.  
 Acting after expiration of term. 140: 178.  
 Incumbents of offices having no legal existence. 140: 182.  
 Unconstitutional incumbency of de jure officers. 140: 186.  
 Incumbents of offices under illegal government. 140: 188.

## § 5. Status of De Facto Officer.

As to public and third persons. 140: 203.

Suing or defending in own right. 140: 205.  
 Possession of office. 140: 189.  
 Public disbursements to. 140: 191.  
 Right to emoluments of office. 140: 192.  
 Right of de jure officer to emoluments. 140: 194.  
 Equitable remedies to preserve fees pending suit. 140: 195.

#### § 6. Abandonment of Public Office.

Intent as test of voluntary abandonment. 113: 516.  
 Nonuser or neglect of duties. 113: 516.  
 Removal from state. 113: 517.  
 Removal from county or district. 113: 517.  
 Surrender of office to successor. 113: 518.  
 Acquiescence in wrongful removal. 113: 519.

#### § 7. Acceptance of Office and Resignation.

Obligation to accept office. 36: 523.  
 Right of officer to resign. 36: 524.  
 Effect of resignation. 36: 524.  
 Necessity for acceptance of resignation. 36: 525.  
 Right to withdraw resignation. 36: 527.

#### § 8. Loss of One Office by Accepting Another.

Incompatibility at common law. 86: 578.  
 — What constitutes. 86: 580.  
 — Illustrations of incompatible offices. 86: 582.  
 Incompatibility under the constitution. 86: 583.  
 — Offices held under different governments. 86: 586.  
 — Illustrations of prohibited offices. 86: 588.  
 — Illustrations of offices not prohibited. 86: 590.

#### § 9. Removal for Cause.

Implication of the law. 135: 250.  
 What is cause. 135: 251.  
 Where the appointing power has made no provision for removal. 135: 254.  
 Mode of removal. 135: 256.  
 Cause as ground for removal as question of law. 135: 257.

Remedies for wrongful mode of removal, injunction, quo warranto, mandamus, certiorari and prohibition. 135: 258-260.  
 Abuse of power by removing body. 135: 260.

#### § 10. Compensation.

Right of de jure officer to his salary while the office is held by de facto officer. 10: 284, 285.

#### § 11. Exemption of Earnings from Execution or Attachment.

General rule and reasons for it. 96: 443.  
 Criticism of the rule. 96: 445.  
 Character and source of remuneration. 96: 446.  
 Time of instituting proceedings. 96: 447.  
 Remedies employed and manner of subsection. 96: 448.  
 Particular statutes. 96: 449.  
 State and federal officers. 96: 449.  
 County, town and city officers. 96: 449.  
 — Modification by special statutes. 96: 450.  
 — Waiver of immunity. 96: 451.  
 School teachers and officers. 96: 452.

#### § 12. Proceedings to Try Title to Office.

Quo warranto. 140: 195.  
 — Office vacated. 140: 196.  
 Mandamus. 140: 196.  
 — To oust usurpers. 140.  
 — To determine de facto incumbency. 140: 197.  
 Injunction. 140: 199.  
 Prohibition. 140: 200.  
 Habeas corpus. 140: 201.  
 Certiorari. 140: 201.  
 Replevin of property belonging to office. 140: 202.  
 Statutory proceedings for delivery of books and papers. 140: 202.

#### § 13. Civil Liability.

Personal liability of judicial and quasi-judicial officers for official acts. 137: 47-53.

#### § 14. Liability to Private Individuals for Misfeasance or Nonperformance of Official Duty.

At common law. 95: 74.  
 Who may sue. 95: 74.

Time for performance of duty. 95: 76.  
 Malice. 95: 76.  
 Pleading and proof. 95: 77.  
 Measure of damages. 95: 77.  
 Defenses. 95: 77.  
 Acts of subordinates. 95: 79.  
 Particular officers. 95: 80-134.

### § 15. Criminal Liability for Neglect of Duty.

In general. 40: 712.  
 Particular officers. 40: 713.  
 Liability for corrupt conduct. 40: 713, 714.

### § 16. When Bond Takes Effect.

Official bonds take effect from date of delivery and acceptance. 90: 189.

### § 17. Alteration or Forgery of Bond.

Alterations. 90: 202.  
 — Filling blanks. 90: 203.  
 Alteration and spoliation distinguished. 90: 204.  
 Forgeries. 90: 204.

### § 18. Defects in Bonds Which Do not Relieve Sureties.

Failure to execute in time. 90: 191.  
 Formal defects. 90: 192.  
 Sufficiency of signatures. 90: 192.  
 Signing on condition that others sign. 90: 194.  
 Omission of seal. 90: 195.  
 Omission of revenue stamp. 90: 196.  
 Omission of attestation. 90: 196.  
 Recital of erroneous date. 90: 196.  
 Naming wrong obligee. 90: 197.  
 Imposing condition different from those required by statute. 90: 199.  
 — Excessive penalties. 90: 199.  
 — Less onerous conditions. 90: 199.  
 — Undertaking void in part. 90: 199.  
 Defective statutory bond as common law or voluntary obligation. 90: 200.  
 Binding effect of bonds not required by statute. 90: 200.  
 — Must be voluntary. 90: 201.  
 Parties to actions on defective statutory bonds sued on as common-law obligation. 90: 202.

### § 19. Irregularities Which Do not Relieve Sureties.

Failure of actual delivery of bond. 90: 189.

In filing and recording bond. 90: 189.  
 In approval of bond. 90: 190.  
 Necessity for acceptance. 90: 191.  
 Failure of sureties to justify. 90: 191.  
 Ineligibility of officer. 90: 204.  
 Omission to take oath or sue out commission. 90: 205.  
 Invalidity of title to office. 90: 205.  
 Negligence or wrong of other officers. 90: 206.

### § 20. Liability of Sureties.

Liability of sureties on successive bonds given for different terms of office. 10: 843-860.  
 Defaults of prior term. 10: 844.  
 Defaults of second or subsequent terms. 10: 845.  
 Review of decisions. 10: 846-860.

### § 21. Same.

Liability for interest received on public funds. 91: 527.  
 Liability for statutory penalties. 91: 528.  
 Liability where default is from several funds covered by separate official bonds. 91: 529.  
 Good faith of official immaterial. 91: 529.  
 Negligence or default of other officers causing principal's default. 91: 529.  
 Negligence or default of other officer not causing principal's default. 91: 530.

### § 22. Obligation of Sureties Strictly Construed.

General rule. 91: 502.  
 Construction must be reasonable. 91: 503.  
 Principal and sureties bound to same extent. 91: 503.

### § 23. Liability of Sureties After Expiration of Term of Office.

Liability limited to the term—In general. 103: 933.  
 — Where term is fixed but bond indefinite. 103: 933.  
 — Where bond contains general and specific clauses. 103: 935.  
 — Clause "until successor is appointed." 103: 935.  
 — Clause "while he holds such office." 103: 939.  
 — Where legislature extends term. 103: 939.

— Where officer is appointed to fill vacancy. 103: 939.

— Where officer is a deputy. 103: 939.

Liability continued after term—Where language of bond is general. 103: 940.

— Where term of office is indefinite. 103: 940.

#### § 24. Liability of Sureties Where Special or Additional Bonds are Required.

Liability of sureties on general bond. 91: 507.

— Instances. 91: 508.

Liability of sureties on special bond. 91: 509.

#### § 25. Sureties Liable for Official Acts Only.

General rule. 91: 510.

Statutory exceptions. 91: 510.

Distinction between acts under color and by virtue of office. 91: 510.

Immaterial that object of default is personal profit. 91: 512.

Nonpayment of bills incurred in performing official duty. 91: 513.

Nonpayment by de facto to de jure officer, of fees and funds collected. 91: 514.

When sureties are relieved for acts of officer because not done virtute officii. 78: 420-425.

#### § 26. Liability of Sureties for Performance of Duties Imposed After Execution of Bond.

Where new duties are not germane to old. 91: 503.

— Statute making bond cover such duties. 91: 505.

Where new duties are germane to old. 91: 505.

— Treasurers. 91: 506.

— Sheriffs, constables, etc. 91: 506.

— Tax collectors. 91: 506.

— Clerks of court. 91: 507.

#### § 27. Liability of Sureties for Judicial Acts.

General rule. 91: 515.

Where done corruptly. 91: 515.

What are deemed judicial acts. 91: 515.

#### § 28. Liability of Sureties for Loss of Funds Without Fault.

Doctrine that liability is absolute. 91: 516.

— Effect of statute prohibiting conversion of funds. 91: 517.

Doctrine of liability absolute unless expressly qualified. 91: 517.

— Basis of doctrine. 91: 518.

— Loss by robbery or inevitable accident. 91: 519.

— Loss by failure of depository. 91: 520.

— Loss by act of God or public enemy. 91: 521.

— Private funds officially held. 91: 522.

— When liability is expressly qualified. 91: 524.

Doctrine that liability is for loss by negligence only. 91: 525.

— Where loss is negligent or after previous default. 91: 526.

#### § 29. Actions Against Officers.

When officers are not exempt from suit on the ground that they are representing a sovereign. 108: 831-844.

#### § 30. — Evidence.

Receipts, official reports, entries or returns of officers as evidence of facts recited in actions against sureties. 3: 749.

### OFFSETS.

See Setoff and Counterclaim.

### OIL.

Liability of persons keeping explosive oils. See Explosives, § 1.

Mechanic's lien for. See Mechanics' Liens, § 1.

Oil mines or wells. See Mines and Minerals.

### OIL PRODUCERS.

Tax on occupation of. See Licenses, § 1.

### OKLAHOMA.

State corporation commission of Oklahoma. See Corporations, § 7.

Regulation of railroads by corporation commission. See Railroads, § 1.

### OLEOMARGARINE.

State regulation of foreign-made oleomargarine. See Commerce, § 1.

Police power to regulate. See Constitutional Law, § 4.

### OLOGRAPHIC WILLS.

Nature and essentials. See Wills, § 2.



## OMISSIONS.

In certificate of acknowledgment. See Acknowledgment, § 4.

## OMITTED HEIRS.

Rights of. See Wills, § 35.

## OMNIBUS.

Exempt from execution. See Exemptions, § 8.

## ON DEMAND.

Limitation of actions on obligations payable on or after demand. See Limitation of Actions, § 8.

## ONEIDA COMMUNITY.

Equity jurisdiction over. See Associations, § 4.

## OPEN ADULTERY.

Offense of living in. See Adultery, § 1.

## OPEN FORNICATION.

What constitutes. See Fornication, § 2.

## OPENING AND VACATING.

Judgment. See Judgment, § 14.  
Judicial sale for advanced bid. See Judicial Sales, § 7.

## OPINION.

As false representation. See Fraud, § 3.

## OPINION EVIDENCE.

Power of court to limit number of expert witnesses. See Witnesses, § 1.

## OPIUM.

Police power to regulate sale or manufacture of. See Constitutional Law, § 7.  
Sale or distribution may be declared a crime. See Criminal Law, § 1.  
Use of, as ground for divorce. See Divorce, § 4.

## OPPRESSION.

Distinguished from extortion. See Extortion, § 1.

## OPTIONS.

Application of rule against perpetuities to options to purchase. See Perpetuities, § 1.  
Specific performance of option to convey land. See Specific Performance, § 8.  
Time as essence of option to purchase land. See Vendor and Purchaser, § 2.  
To purchase land. See Vendor and Purchaser, § 3.

## ORAL EVIDENCE.

See Evidence, §§ 25-29.

## ORAL REPUBLICATION.

Of revoked will. See Wills, § 21.

## ORAL WILL.

Nature and essentials. See Wills, § 10.

## ORDERING CARE.

What constitutes. See Negligence, § 1.

## ORDER OF LIABILITY.

Of different sets of sureties. See Principal and Surety, § 3.

## ORDERS.

See Judgment.

## ORDINANCES.

City ordinances. See Municipal Corporations, § 8.

## ORE.

Effect of intermixture of ore belonging to different owners. See Confusion of Goods, § 2.  
Necessity for discovery of pay ore to constitute discovery of mine. See Mines and Minerals, § 2.

## ORGANIZATION.

Of corporations. See Corporations, § 1.

## ORIGINAL PACKAGE.

See Commerce, § 1.

## ORPHANS.

Subject to adoption. See Adoption, § 1.

## OSTENSIBLE PARTNER.

Liability of one held out as partner. See Partnership, § 13.

## OSTEOPATHY.

As practice of medicine. See Physicians and Surgeons, § 4.

## OSTRACISM.

Words tending to subject a person to ostracism as libel. See Libel and Slander, § 2.

## OTHER OFFENSES.

Admissibility of evidence of. See Criminal Law, §§ 24-26.  
Right to try extradited persons for offenses other than that for which they were extradited. See Extradition, § 14.

## OUSTER.

What constitutes. See Ejectment, § 1.

## OUSTING JURISDICTION.

Validity of contracts ousting jurisdiction. See Contracts, § 8.

**OUTCROPPINGS.**

Discovery of outcropping vein of ore. See Mines and Minerals, § 2.

**OVERHANGING TREES.**

Right to maintain. See Adjoining Land Owners, § 2.

**OVERISSUE OF STOCK.**

By corporations. See Corporations, § 11.

**OVERLOADING CARS.**

Liability of street railroads for injuries from. See Carriers, § 41.

**OVERPAYMENTS.**

Right to recover money overpaid. See Payment, § 3.

**OVERSEERS.**

Right to mechanic's lien. See Mechanics' Liens, § 2.

**OVERT ACT.**

Proof of. See Conspiracy, § 5.

**OVERTAKING VEHICLES.**

Law of the road governing. See Highways, § 9.

**OVERTAKING VESSEL.**

Must avoid overtaken vessel. See Collision, § 1.

**OWNERS OF PROPERTY.**

See Landlord and Tenant; Property; and references under Title.

Mutual rights, duties and liabilities of owners of adjoining lands. See Adjoining Land Owners.

**OWN STOCK.**

Power of corporation to purchase. See Corporations, § 47.

**OWN WITNESS.**

Right to impeach one's own witness. See Witnesses, § 14.

**OYSTER-BEDS.**

See Fish.

Acquisition of title to oyster-beds by adverse possession. See Adverse Possession, § 1.

**PAID-UP STOCK.**

Right to assess. See Corporations, § 18.

**PALACE CARS.**

See Sleeping-cars.

**PARALLEL LINES.**

Parallelism of end lines in mineral veins. See Mines and Minerals, § 5.

**PARANOIA.**

As justification for crime. See Criminal Law, §§ 8, 9.

**PARDON.****§ 1. Conditional Pardon.**

Constitutionality of statutes concerning. 111: 108.

Power to grant. 111: 109:

Conditions—In general. 111: 110.

— Leaving state. 111: 111.

— Use of liquor. 111: 112.

Compliance with conditions. 111: 112.

Breach of conditions—Right to hearing on. 111: 113.

Conditions which may be imposed in grant of pardon and their effect. 70: 836, 837.

**PARENT AND CHILD.****CUSTODY OF CHILD, § 1.**

CONTRACTS TRANSFERRING PARENTAL CUSTODY, § 2.

OBLIGATION OF CHILD TO SUPPORT PARENT, § 3.

LIABILITY OF PARENT FOR ACTS OF CHILD, § 4.

SERVICES OF CHILD, § 5.

See, also, Guardian and Ward; Infants.

Adoption of children. See Adoption.

Illegitimate children. See Bastards.

Crime of child coerced by parent. See Criminal Law, § 6.

Presumption of survivorship when both perish in common disaster. See Death, § 2.

Homicide by neglect of child. See Homicide, § 11.

Imputing negligence of parent to child. See Negligence, § 14.

Disobedient children as vagrants. See Vagrancy, § 2.

Competency of children as witnesses. See Witnesses, § 4.

**§ 1. Custody of Child.**

Nature of father's right. 2: 183.

Right of father to transfer custody. 2: 184.

Mother's right. 2: 184.

Mother's right to custody of bastard. 2: 185.

Proceedings to enforce right. 2: 186, 187.

**§ 2. Contracts Transferring Parental Custody.**

Common-law rule. 88: 866.

Revocation of contract. 88: 868, 872.

Validity and essentials of contract. 88: 869.

Enforcement of contract and rights under it. 88: 871.

Welfare of child governs rights under. 88: 873.

Statutory provisions. 88: 874.  
 Illegitimate child. 88: 874.  
 Expiration of contract. 88: 875.

### § 3. Obligation of Child to Support Parent.

A purely statutory duty. 117: 128.  
 Proceedings under the statute. 117: 129.

### § 4. Liability of Parent for Acts of Child.

Common and civil law. 74: 801, 807.  
 Assault and battery. 74: 801.  
 Willful trespass. 74: 802.  
 Necessity for agency or approval of acts. 74: 802, 807.  
 Child acting as servant of parent. 74: 804.  
 Use of firearms and dangerous instruments. 74: 806.  
 — Air-gun. 74: 806.  
 Previous authority or subsequent ratification. 74: 807.  
 Acts resulting in death. 74: 807.

### § 5. Services of Child.

Presumption that services are gratuitous. 133: 251, 252.

### PARI DELICTO.

Rule of. See Contracts, § 16.  
 Equitable relief to parties in pari delicto. See Equity, § 5.

### PARIS MUTUALS.

As gambling devices. See Gaming, § 5.

### PARKS.

Adverse possession of. See Adverse Possession, § 1.  
 Taxation for. See Taxation, § 3.

### PAROL AGREEMENTS.

See Contracts.

Oral statement of account. See Account Stated, § 1.

### PAROL EVIDENCE.

See Evidence, §§ 25-29.

### PAROL LICENSE.

To use land. See Licenses, § 6.

### PAROL REPUBLICATION.

Of revoked will. See Wills, § 21.

### PAROL TRUSTS.

Simple trust in land. See Trusts, § 2.  
 Constructive trust in land. See Trusts, § 3.  
 Voluntary trust in personalty. See Trusts, § 4.

### PAROL WILLS.

Nature and essentials. See Wills, § 10.

### PARTIAL ABANDONMENT.

Effect of. See Abandonment, § 3.

### PARTIAL ASSIGNMENT.

Right to assign part of demand. See Assignment, § 2.

### PARTIAL INVALIDITY.

Of contract. See Contracts, § 13.  
 As annulling entire will. See Wills, § 14.

### PARTIAL JUSTIFICATION.

Of libel and slander. See Libel and Slander, § 12.

### PARTIES.

IN GENERAL, § 1.  
 NEW PARTIES, § 2.  
 INTERVENTION, § 3.

Pendency of action between different parties as ground for abatement. See Abatement and Revival, § 1.

Substitution of personal representatives on death of party pending suit. See Abatement and Revival, § 4.

To suit against unknown owners. See Absentees, § 2.

Entitled to appeal. See Appeal and Error, § 2.

To writ of certiorari. See Certiorari, § 2.

To criminal offenses. See Criminal Law, § 12.

To forcible entry suit. See Forcible Entry and Detainer, § 6.

Entitled to interplead. See Interpleader, § 3.  
 Substituting one defendant for another. See Interpleader, § 5.

Who are parties estopped or concluded by judgment. See Judgment, §§ 34-43.

To action on lost instrument. See Lost Instruments, § 1.

To mandamus suit. See Mandamus, § 3.

Mandamus to compel allowance of substitution or intervention. See Mandamus, § 6.

Exemption of parties attending court from civil process. See Process, § 4.

To suit to quiet title. See Quieting Title, § 1.

To replevin suit. See Replevin, § 1.

To scire facias proceedings. See Scire Facias, § 2.

Who may contest wills. See Wills, § 22.

#### § 1. In General.

Proceedings against persons by their initials or by less or other than their full Christian names.  
 132: 563-579.

**§ 2. New Parties.**

Mode of acquiring jurisdiction over.  
50: 737.

Necessity for process. 50: 738.

Practice. 50: 738.

Substitution on death of party. 50:  
741.

**§ 3. Intervention.**

Definition. 123: 280.

Origin and purpose. 123: 281.

Leave of court. 123: 286.

Application. 123: 286.

— Time to make. 123: 294.

Discretion of court. 123: 287.

Complaint or petition. 123: 289.

Notice or proof. 123: 290.

Answer to complaint in intervention.  
123: 291.

Issues pleadable by intervener. 123:  
292.

Actions in which permissible. 123:  
296.

Persons entitled and interests which  
will support. 123: 297-308.

In attachment. 123: 308.

In garnishment and execution. 123:  
310.

Trial of proceeding. 123: 311.

Statute of limitations. 123: 311.

Judgment and relief awardable. 123:  
312.

Appeal. 123: 313.

**PARTITION.****IN GENERAL, § 1.****CONTINGENT OR FUTURE CONDI-  
TIONAL INTERESTS, § 2.****ESTATES OF DECEDENTS FOR DISTRI-  
BUTION, § 3.****SAME, § 4.****ESTATES IN REVERSION OR REMAIN-  
DER, § 5.****EFFECT OF COMPULSORY PARTITION,  
§ 6.****DECREE, § 7.**

Proceedings against unknown owners. See  
Absentees, § 2.

Deed or decree as color of title. See Adverse  
Possession, § 10.

Effect on dower. See Dower, § 2.

Applicability of statute of frauds to partition  
agreements. See Frauds, Statute of, § 8.

Of ward's estate. See Guardian and Ward,  
§ 10.

Of mines held by cotenants. See Mines and  
Minerals, § 17.

**§ 1. In General.**

Whether the partition must include all  
the lands in the cotenancy.  
114: 80.

Right to compel purchaser at partition  
sale to comply with his bid.  
52: 176.

**§ 2. Contingent or Future Conditional  
Interests.**

Reversions and remainders. 32: 778;  
113: 55.

— By tenant in possession. 32: 778.

— By remainderman or reversioner.  
32: 780.

Necessity for present right of posses-  
sion. 32: 780.

**§ 3. Estates of Decedents for Dis-  
tribution.**

Jurisdiction. 41: 140.

Time to apply for. 41: 141.

Persons entitled to. 41: 142.

Formal requisites of petition. 41: 142.

Parties to proceeding. 41: 142.

Issues triable. 41: 143.

Personal jurisdiction necessary. 41:  
145.

Commissioners — Qualifications. 41:  
146.

— Duties and powers. 41: 147.

— Reports. 41: 149.

Sale—Order, confirmation and effect.  
41: 149, 150.

**§ 4. Same.**

General rule. 119: 586.

Statutes withholding right until settle-  
ment of estate. 119: 590.

Giving time to settle estate. 119: 591.

Discretion of court to prevent injustice  
in application of general rule.  
119: 592.

Where part only of the estate involved  
has been acquired by devise or  
descent. 119: 593.

**§ 5. Estates in Reversion or Re-  
mainder.**

Common-law rule. 113: 55; 32: 778.

Classification. 113: 55.

Where nothing but reversion or re-  
mainder is sought to be parti-  
tioned. 113: 55; 32: 778-780.

Where proceeding is brought by co-  
tenant of estate in possession.  
113: 56.

Where party seeking partition has an  
estate in fee. 114: 57.

**§ 6. Effect of Compulsory Partition.**

Parties bound—Parties to the suit.  
101: 864.

— Persons not made parties or not served with process. 101: 865-870.

Issues involved or determined—At common law. 101: 870.

— Statutory proceeding for partition. 101: 871.

Right to contribution when title or some part of it is not bound by judgment. 101: 874.

Effect of subsequent acquisition of paramount title by one of the parties. 101: 874.

### § 7. Decree.

Collateral attack upon. 124: 713.

Titles determined by. 124: 715.

## PARTITION FENCES.

Liability for injuries from defects in. See Fences, § 1.

## PARTNERSHIP.

### IN GENERAL, § 1.

### NATURE AND ESSENTIALS, § 2.

### WHO MAY FORM, § 3.

### POWER OF MARRIED WOMEN TO BE PARTNERS, § 4.

### PURPOSES FOR WHICH PARTNERSHIP MAY BE FORMED, § 5.

### COMMUNITY OF INTEREST IN PROPERTY OR PROFITS, § 6.

### IN REAL ESTATE, § 7.

### PROTECTION OF FIRM SECRETS, § 8.

### POWER OF PARTNER TO BIND FIRM, § 9.

### POWER OF ONE PARTNER TO BORROW MONEY, § 10.

### POWER TO RESTRICT OR REVOKE AUTHORITY OF PARTNER, § 11.

### LIABILITY FOR TORTS OF PARTNER, § 12.

### LIABILITY OF ONE HELD OUT AS PARTNER, § 13.

### USE OF FIRM PROPERTY TO PAY INDIVIDUAL DEBT, § 14.

### RIGHTS AND REMEDIES OF CREDITORS, § 15.

### RIGHT OF CREDITOR OF ONE PARTNER TO LEVY ON FIRM ASSETS, § 16.

### ACCOUNTING BY ILLEGAL PARTNERSHIP, § 17.

### APPLICATION OF ASSETS, § 18.

### EFFECT OF DEATH OF PARTNER, § 19.

### RIGHT OF SURVIVOR TO COMPENSATION, § 20.

### DISSOLUTION, § 21.

### — PARTNERSHIP TO CONTINUE FOR DEFINITE PERIOD, § 22.

### — GROUNDS, § 23.

### — POWERS, RIGHTS, LIABILITIES AND REMEDIES OF PARTNERS AFTER DISSOLUTION, § 24.

See, also, Associations; Corporations.

Certificate of acknowledgment by. See Acknowledgment, § 4.

Accommodation paper made or indorsed by partners. See Bills and Notes, § 1.

Goodwill of. See Goodwill, § 3.

Capacity of infant to enter into. See Infants, § 1.

Part owners of vessels as partners. See Shipping, § 1.

Specific performance of contract to enter into. See Specific Performance, § 6.

Following trust funds invested in partnership. See Trusts, § 15.

### § 1. In General.

Partnership existence as question of law or fact. 43: 229-232.

Right of one partner to purchase the property of the other at judicial, execution or other forced sale. 136: 817.

### § 2. Nature and Essentials.

General definitions. 115: 401.

Distinguished from joint tenancy and cotenancy. 115: 407.

Distinguished from joint adventure. 115: 407.

Distinguished from joint stock company. 115: 407.

Consideration necessary. 115: 412.

Intent to form partnership. 115: 412.

Mutual agency among parties. 115: 413.

De facto corporations as. 115: 419.

Promoters or subscribers to stock before incorporation. 115: 419.

Parties pretending to conduct corporation. 115: 420.

### § 3. Who may Form.

In general. 115: 410.

Several partnerships. 115: 410.

Several corporations or corporation and individual. 115: 411.

Husband and wife. 115: 411.

### § 4. Power of Married Women to be Partners.

In general. 31: 934.

Between married woman and third persons. 31: 935.

Between husband and wife. 31: 935.

Marriage of feme sole partner dissolves firm. 31: 936.

### § 5. Purposes for Which Partnership may be Formed.

Must be for pecuniary gain. 115: 408.

For single transaction or venture. 115: 408.

To buy or speculate in land. 115: 409.

Illegal purposes. 115: 409.

**§ 6. Community of Interest in Property or Profits.**

Necessity. 115: 420.

Where one furnishes property, the other service or skill. 115: 424.

Where owners of separate businesses pool their property and proceeds. 115: 426.

Status of subpartners. 115: 430.

Necessity for participation in both profits and losses. 115: 431.

Where sharing losses is limited to some of the parties. 115: 435.

Where party shares losses or expenses only. 115: 436.

Where parties share crops, cattle and their increase instead of money. 115: 437.

Where share of profits is allowed as compensation for services in whole or in part. 115: 439.

Where share of profits is allowed in payment of capital advanced. 115: 441.

Where share of profits is allowed as interest on loans or advances. 115: 441.

Where share of profits is allowed as rent. 115: 442.

**§ 7. In Real Estate.**

Distinguished from cotenancy. 48: 62.

Real estate cannot belong to partnership. 48: 63.

Treated as partnership assets in equity. 48: 64.

Intention of partners. 48: 64-69.

Formal requisites of agreement. 48: 65.

Consequences of partnership. 48: 65.

Parol evidence to establish. 48: 65.

Partnership to deal in lands. 48: 65.

Presumption against firm ownership of land. 48: 66.

Land taken in satisfaction of debt. 48: 67.

Land purchased with firm assets. 48: 67.

Books showing firm ownership. 48: 67.

Land purchased with money loaned to partner by firm. 48: 68.

Land acquired outside of firm business. 48: 68.

Mere use of land for partnership purposes. 48: 69.

Intention that land be deemed firm property. 48: 69.

Treating land as personalty. 48: 70.

Sale and conveyance by one partner. 48: 74.

Purchasers and encumbrancers without notice. 48: 75.

**§ 8. Protection of Firm Secrets.**

Protection of partnership trade secrets and secret processes. 133: 767.

**§ 9. Power of Partner to Bind Firm.**

During existence of partnership. 12: 304.

After dissolution. 12: 304, 305.

**§ 10. Power of One Partner to Borrow Money.**

Commercial partnership. 48: 438.

Power to give notes in firm name. 48: 439.

Managing partner. 48: 440.

Loan for individual purposes. 48: 440, 441.

Burden of proof. 48: 442.

What are noncommercial partnerships. 48: 442.

**§ 11. Power to Restrict or Revoke Authority of Partner.**

Agency of partners in general. 88: 322.

Form and notice of restriction of authority. 88: 323.

Effect of receipt of benefits of transaction. 88: 323.

Firm of more than two members. 88: 324.

Revocation of authority to receive payment. 88: 324.

**§ 12. Liability for Torts of Partner.**

Acts within scope of firm business. 67: 38.

Acts without scope of firm business. 67: 39.

Negligence. 67: 41.

Wrongful conversion. 67: 42.

Misappropriation of funds in custody of firm. 67: 43.

Misuse of trust funds. 67: 44.

Fraud or misrepresentation. 67: 46.

Willful wrongs and acts in violation of law. 67: 50.

Criminal liability. 67: 50.

**§ 13. Liability of One Held Out as Partner.**

Persons not partners who represent themselves as such or allow themselves to be so represented. 22: 757.

Estoppel to deny status. 22: 757, 758.  
Effect of notice to persons dealing with firm. 22: 757.

Secret agreements limiting authority. 22: 760.

Evidence to establish holding out. 22: 761-762.

Retiring partner failing to give notice of retirement. 22: 763.

**§ 14. Use of Firm Property to Pay Individual Debt.**

General rule prohibits partner from applying firm assets in payment of his private debts. 7: 377-378.

Exceptions to the rule. 7: 378.

That there was actual or presumptive fraud may be rebutted. 7: 379.

Recovery of funds misapplied. 7: 380.

Assent or ratification of copartner. 7: 380.

**§ 15. Rights and Remedies of Creditors.**

General rule. 43: 364.

Proceedings at law against separate property. 43: 365.

Equitable proceeding against separate property. 43: 366.

— Estate of deceased partner. 43: 367.

Bankrupts and insolvents. 43: 368.

Against estates of deceased partners. 43: 369.

Liens of creditors. 43: 370.

Preferences in favor of firm creditors. 43: 371.

Disposition of property by partners. 43: 372.

Disposition of property for individual debts. 43: 373.

Application by partner of firm property to individual debt. 43: 374.

Waiver of partner's lien destroys equity of firm creditor's. 43: 374, 375.

Transfer of interest of one partner to third person. 43: 375.

Transfer of interest by death of one partner. 43: 375.

Right to pursue firm real estate. 43: 377.

Form of relief. 43: 380.

**§ 16. Right of Creditor of One Partner to Levy on Firm Assets.**

Real property. 57: 436.

Interest of partner in firm property. 57: 437.

Exemptions. 57: 437.

Nature of partner's interest. 57: 438.

Levy of writ of attachment. 57: 438.

Possession which may be taken under the writ. 57: 439.

Levy upon specific chattels. 57: 440.

Levy must be restricted to partner's interest. 57: 441.

Title passing by execution sale. 57: 441.

Delivery of possession to purchaser. 57: 441.

Writ may be against all members of firm. 57: 442.

Garnishment. 57: 442.

Priority of writs against the partnership. 57: 443.

**§ 17. Accounting by Illegal Partnership.**

Right to maintain action. 99: 326.

Illegality of partnership as defense to action for accounting. 99: 327.

Partially illegal partnership. 99: 329.

Wrongful conversion by one partner. 99: 329.

**§ 18. Application of Assets.**

Order of application. 51: 911.

Lien on assets. 51: 911.

Persons liable to contribute to assets. 51: 911.

**§ 19. Effect of Death of Partner.**

In general. 79: 709.

Continuation after death. 79: 710.

— For purpose of winding up. 79: 710.

Continuation under partnership agreement. 79: 712.

Continuance under directions in will. 79: 713.

Liability of decedent's estate. 79: 715.

Equity may treat partnership as continuing. 79: 716.

Mining partnerships. 79: 716.

**§ 20. Right of Survivor to Compensation.**

Winding up affairs of firm. 112: 843.  
 Continuing or unusual services. 112: 843.  
 Administering on firm effects. 112: 845.  
 Acting as receiver. 112: 845.  
 Nontrading partnerships. 112: 845.

**§ 21. Dissolution.**

By death of partner. 79: 709-716.

**§ 22. — Partnership to Continue for Definite Period.**

All partnerships are dissoluble. 79: 319.  
 Difference between partnerships for indefinite and those for definite period. 77: 319.  
 Dissolution as breach of partnership agreement. 77: 319.  
 Withdrawal of partner. 77: 320.  
 Sale of interest of partner. 77: 320.  
 Dissolution in equity. 77: 321.

**§ 23. — Grounds.**

Dissolution generally. 69: 410.  
 Events which, per se, amount to. 69: 411.  
 Accomplishment of purpose. 69: 411.  
 Bankruptcy or insolvency. 69: 412.  
 Death of partner. 69: 414.  
 Execution or attachment. 69: 416.  
 Marriage of woman partner. 69: 416.  
 Sale or mortgage of property or interests. 69: 416.  
 War. 69: 418.  
 Declaring partnership void ab initio. 69: 419.  
 Misrepresentation of material facts. 69: 420.  
 Power of courts to dissolve partnership. 69: 420.  
 Abandonment. 69: 421.  
 Destroyed confidence. 69: 423.  
 Exclusion of partner. 69: 424.  
 Hopeless state of business. 69: 425.  
 Failure of partner to contribute funds. 69: 426.  
 Insanity. 69: 427.  
 Misconduct, extravagance, dishonesty, or drunkenness. 59: 430.  
 Misappropriation of funds. 69: 431.  
 Quarrels and chronic hostility. 69: 432.  
 Trifling grievances. 69: 434.

**§ 24. — Powers, Rights, Liabilities and Remedies of Partners After Dissolution.**

Dissolution results in limited partnership for closing purposes. 40: 562.  
 Partners as cotenants. 40: 563.  
 Sales and other transfers by member. 40: 563.  
 Indorsement of negotiable paper. 40: 564.  
 Compromise and settlement. 40: 564.  
 New contracts. 40: 564.  
 Renewals and extensions. 40: 565.  
 Acknowledgment and new promise to pay, barred debt. 40: 565.  
 Admissions of one partner. 40: 566.  
 Borrowing money. 40: 567.  
 Completion of unfinished business. 40: 568.  
 Tender, demand and notice. 40: 568.  
 Waiver. 40: 568.  
 Collections. 40: 569.  
 Compensation. 40: 570.  
 Sharing profits. 40: 571.  
 Partners whose interests have been transferred. 40: 571.  
 Liquidating partners. 40: 571, 572.  
 General rights. 40: 569.  
 Liabilities. 40: 572.  
 Remedies. 40: 573, 574.  
 Accounting. 40: 574.

**PART PAYMENT.**

In money, property, notes or executory agreements as valid consideration for accord and satisfaction. See Accord and Satisfaction, § 3.  
 Taking sale out of operation of statute of frauds. See Frauds, Statute of, § 7.

**PART POSSESSION.**

Possession of part of tract as possession of whole. See Adverse Possession, § 11.

**PARTY-WALLS.**

Right to maintain insecure walls which threaten injury to adjoining land. See Adjoining Land Owners, § 2.

**§ 1. General Note.**

What constitutes. 89: 925.  
 Mode of creating. 89: 926.  
 Right to windows and openings. 89: 928.  
 Ownership of wall. 89: 929.  
 Right to increase foundation, length or height. 89: 930.  
 Right to remove, rebuild or repair. 89: 923.



Right of support. 89: 935.  
 Destruction of wall. 89: 937.  
 Contribution for use of wall. 89: 939.  
 — Whether covenant runs with the land. 89: 941.  
 — Grantee with notice. 89: 944.  
 — One owner beginning, the other finishing the wall. 89: 944.  
 Rights under leases. 89: 945.

### PASS-BOOKS.

Bank pass-books and effect of balances entered in them. See Banks and Banking, §§ 14, 15.  
 Savings bank pass-books. See Banks and Banking, § 25.

### PASSENGER CARRIERS.

See Carriers, §§ 33-54.

### PASSENGER ELEVATORS.

See Carriers, § 55.

### PASSING OF TITLE.

To goods sold. See Sales, §§ 9, 10.

### PAST OFFENSES.

Right to arrest without warrant for. See Arrest, § 1.

### PATENTS.

Police power to regulate sale of patented articles. See Constitutional Law, § 7.  
 Mineral and veins included in mineral patent. See Mines and Minerals, § 5.  
 Combinations relating to. See Monopolies, § 1.  
 Taxation of patent rights and patented articles. See Taxation, § 9.

#### § 1. Unpatented Secret Processes and Trade Secrets.

What constitutes. 133: 760.  
 Use in commerce. 133: 760.  
 Property rights. 133: 762.  
 Right of public to discover the secret. 133: 763.  
 Protection against disclosure by servant. 133: 763.  
 — Contract against disclosure as restraint of trade. 133: 764.  
 — Enjoining disclosure. 133: 765.  
 Protection under contracts of sale or use. 133: 765.  
 — Right to restrict use to certain territory. 133: 766.  
 — Protection as between different purchasers. 133: 767.  
 — Protection where partnership holds secret. 133: 767.

— Protection where corporation holds secret. 133: 768.  
 Judicial proceedings to protect. 133: 768.  
 Protection pending suit. 133: 768, 769.

#### § 2. Master's Right to Invention of Servant.

In general. 52: 820.  
 Persons employed to invent. 52: 820.  
 Right to use patented article. 52: 821.

#### § 3. Infringement.

Right to waive tort and sue in assumpsit for infringement. 134: 195.  
 Jurisdiction of state courts in action ex contractu for infringement. 134: 195.

### PATERNITY.

Photograph as evidence of. See Evidence, § 22.

### PAVING STREETS.

Obligation of street railroad company to pave streets. See Street Railroads, § 2.

### PAWNBROKERS.

Liability for theft of pledge. See Pledges, § 3.  
 Care required of. 83: 392-394.

### PAY-DIRT.

Necessity for discovery of pay-dirt to locate mine. See Mines and Minerals, § 2.

### PAYMENT.

PRESUMPTION FROM LAPSE OF TIME, § 1.  
 EFFECT OF ACCEPTANCE OF CHECK AS PAYMENT IN FULL, § 2.  
 RECOVERY OF PAYMENTS MADE, § 3.  
 APPLICATION—IN GENERAL, § 4.  
 — BY DEBTOR, § 5.  
 — BY CREDITOR, § 6.  
 — BY COURT, § 7.  
 — ON ACCOUNTS, § 8.  
 — TO ILLEGAL DEMANDS, § 9.  
 — TO UNENFORCEABLE DEMANDS, § 10.  
 — TO PRINCIPAL AND INTEREST, § 11.  
 TIME OF APPLICATION, § 12.  
 CHANGE IN APPLICATION, § 13.  
 MODE OF MANIFESTING APPLICATION, § 14.  
 EVIDENCE OF APPLICATION, § 15.

Discharge of debt or obligation for injury by offer and acceptance of something different from what might have been legally claimed. See Accord and Satisfaction, § 3.  
 Part payment in money, property, securities or executory agreements as valid accord and satisfaction. See Accord and Satisfaction, § 3.

**Receipt in full as accord.** See **Accord and Satisfaction**, § 1.

**Distinguished from accord and satisfaction.** See **Accord and Satisfaction**, § 2.

**When bank may refuse to pay check.** See **Banks and Banking**, § 9.

**Rights and remedies on payment of forged check.** See **Banks and Banking**, § 10.

**Duty of savings bank with respect to repayment of deposits.** See **Banks and Banking**, § 24.

**Prerequisite to subrogation.** See **Subrogation**, §§ 1, 8.

**Recovery of money paid for taxes.** See **Taxation**, § 17.

**Recovery of money paid under contract to purchase land void under statute of frauds.** See **Vendor and Purchaser**, § 12.

### § 1. Presumption from Lapse of Time.

**Nature of presumption and burden of proof.** 18: 879.

**Evidence to rebut presumption.** 18: 879.

**Application of rule to various forms of debts.** 18: 880.

— **Mortgage debts.** 18: 881.

— **Bills and notes.** 18: 882.

— **Judgments.** 18: 883.

— **Taxes.** 18: 884.

**Time requisite to raise presumption.** 18: 885-888.

### § 2. Effect of Acceptance of Check as Payment in Full.

**Unliquidated demands.** 69: 346.

**Liquidated demands.** 69: 349-351.

### § 3. Recovery of Payments Made.

**Voluntary payments—Not recoverable.** 94: 409.

— **Person making payment.** 94: 410.

— **Mistake of law.** 94: 411.

**Involuntary payments—Are recoverable.** 94: 411.

— **What amounts to duress.** 94: 411.

— **Circumstances affecting duress.** 94: 413.

— **Duress of the person.** 94: 417.

— **Duress of goods.** 94: 419.

— **Duress of lands.** 94: 419.

**Payments in particular cases—To carriers.** 94: 420.

— **To gas and water companies.** 94: 421.

— **To landlords.** 94: 422.

— **To mortgagees.** 94: 422.

— **Of interest.** 94: 423.

— **On a compromise.** 94: 424.

**Overpayments.** 94: 424.

**Payments by municipalities.** 94: 424.

**Payment of taxes—Distinguished from other cases.** 94: 427.

— **Voluntary.** 94: 425.

— **Involuntary.** 94: 426-444.

### § 4. Application—In General.

**Bonds of officers.** 96: 73.

**Rights of third persons.** 96: 74.

**Effect of mistake of fact.** 96: 81.

**Voluntary and involuntary payments.** 96: 81.

### § 5. — By Debtor.

**Right to direct.** 96: 46.

**Effect on creditor.** 96: 48.

**Ratification by debtor.** 96: 48.

**Right of action for misapplication.** 96: 49.

### § 6. — By Creditor.

**Debtor must have opportunity to apply.** 96: 54.

**When the right arises.** 96: 49.

**Must not be inequitable.** 96: 49.

**Need not be similar debts.** 96: 50.

**Limitation on right.** 96: 50.

**Must be existing debts.** 96: 50.

**Dividing payments.** 96: 50.

**Rights of third persons.** 96: 51.

**Joint and partnership obligations.** 96: 52.

**Payment derived from particular fund.** 96: 53.

**Payment received for special purpose.** 96: 54.

### § 7. — By Court.

**Where neither party applies.** 96: 54.

**How the court acts.** 96: 55.

**Oldest debts.** 96: 55.

**Secured and unsecured debts.** 96: 56.

**Interest-bearing obligations.** 96: 57.

**Fixed and contingent liabilities.** 96: 57.

**Debts due and not due.** 96: 57.

**Pro rata application.** 97: 58.

**Indivisible transactions.** 97: 58.

**Particular source.** 97: 58.

**Controlling effect of application by parties.** 96: 61.

**Province of court and jury.** 96: 62.

**Where there is only one demand.** 96: 62.

### § 8. — On Accounts.

**General rule applies.** 96: 62.

**By the court—To first items accrued.** 96: 62.

- Where part is secured and part not. 96: 64.
- Where two accounts exist. 96: 64.
- Subsequent appropriation. 96: 64.
- Bank account. 96: 65.
- Interruption in running of account. 96: 65.

**§ 9. — To Illegal Demands.**

- By debtor. 96: 66.
- By creditor. 96: 66.
- By law—Legal items favored. 96: 66.
- Illegal items paid from surplus. 96: 67.

**§ 10. — To Unenforceable Demands.**

- Where part is barred by limitations. 96: 67.
- Where all is barred. 96: 68.
- Application by law. 96: 68.
- Statute of frauds, infancy and bankruptcy. 96: 68.

**§ 11. — To Principal and Interest.**

- Legal interest—General rule. 96: 69.
- No choice in debtor. 96: 69.
- Where received before debt is due. 96: 70.
- Where several debts bear interest. 96: 70.
- Method of computing interest. 96: 70.
- Usurious interest. 96: 71.
- Excessive interest. 96: 71.

**§ 12. Time of Application.**

- For debtor. 96: 72.
- For creditor—Before suit. 96: 72.
- Within reasonable time. 96: 73.
- Till verdict or judgment. 96: 73.
- Before controversy. 96: 73.

**§ 13. Change in Application.**

- Between immediate parties. 96: 75.
- When rights of others are involved. 96: 76.

**§ 14. Mode of Manifesting Application.**

- By debtor—By circumstances. 96: 77.
- By known intent. 96: 77.
- What is sufficient application. 96: 78.

- Silence of debtor. 96: 78.
- By creditor. 96: 78.

**§ 15. Evidence of Application.**

- Books of account. 96: 79.
- Indorsements. 96: 79.
- Letters. 96: 79.
- Statements of account. 96: 80.
- Recitals in legal instruments. 96: 80.
- Miscellaneous. 96: 80.
- Burden of proof. 96: 80.

**PEACE.**

- Nuisances affecting. See Nuisances, § 7.

**PEDDLERS.**

- See Hawkers and Peddlers.

**PEDESTRIANS.**

- Duties in using highways and rights as compared with those of vehicles. See Highways, §§ 9, 11.
- Relative rights of pedestrians and street railroads in streets. See Street Railroads, § 2.

**PENALTIES.**

- Right to sue in one state for penalty imposed by statute of another. See Action, § 1.
- Distinguished from liquidated damages. See Damages, §§ 13-15.
- Liability of homestead for. See Homestead, § 3.
- For cutting, removing or injuring timber. See Woods and Forests, § 1.

**§ 1. Rights of Informer.**

- Nature of qui tam actions. 50: 557.
- Rights of informer to maintain suit. 50: 558.
- General rights. 50: 559.
- Vested rights. 50: 560.

**PENDING ACTION.**

- As abating suit. See Abatement and Revival, § 1.
- Rule of lis pendens. See Lis Pendens.

**PENSIONS.**

- Exemption of pension money. See Exemptions, § 1.
- Liability of pension money to garnishment. See Garnishment, § 1.

**PERCOLATING WATERS.**

- Prescriptive title to. See Waters and Watercourses, § 2.
- What are. See Waters and Watercourses, § 9.
- Land owner's rights in. See Waters and Watercourses, § 10.
- Subterranean waters which are not percolating. See Waters and Watercourses, § 9.

**PEREMPTORY CHALLENGE.**

Right to examine juror to determine whether to exercise peremptory challenge. See Jury, § 4.

**PERFORMANCE.**

Of contract. See Contracts, §§ 17-23.  
Of condition of escrow. See Escrows, § 7.

**PERIODICALS.**

Libels in. See Libel and Slander, § 4.

**PERJURY.**

Equitable relief from judgment obtained by. See Judgment, § 22.

**§ 1. Indictment.**

General requisites. 124: 655.  
Description of proceedings wherein oath was given. 124: 657.  
Description of authority of court or officer. 124: 660.  
Administration of oath. 124: 664.  
Materiality of testimony. 124: 665.  
Setting forth false testimony. 124: 670.  
Assignment of perjury. 124: 671.  
Intent, willfulness and knowledge. 124: 676.

**PERMANENT EMPLOYMENT.**

Validity of contracts for. See Master and Servant, § 2.

**PERMANENT NUISANCE.**

Time to sue for. See Nuisance, § 3.

**PERMANENT STAY OF EXECUTION.**

When judgment is void or satisfied, debtor is declared a bankrupt or for equitable reasons. See Execution, § 4.

**PERMISSION.**

To use land. See Licenses, § 6.

**PERPETUITIES.**

Validity of conditions in deeds restraining alienation. See Deeds, § 17.

**§ 1. Rule Against Perpetuities.**

Development of the rule. 49: 117.  
Rule stated. 49: 118.  
Statutory modification. 49: 118.  
Computation of time. 49: 119.  
Necessity that estate vest within time allowed. 49: 119.  
Vested interests not subject to. 49: 121.

Number of lives in being unlimited. 49: 122.

"Life in being" defined. 49: 122.

Restraints on alienation as part of the rule. 49: 123.

Conflict of laws. 49: 124.

Construction favoring validity of restraint. 49: 126.

Invalid restraints. 49: 126.

Property subject to. 49: 127.

— Accumulations or proceeds of property. 49: 127.

Charitable uses excepted from. 49: 127.

Equitable estates and trusts. 49: 129.

Trusts to secure loans. 49: 131.

Power to sell and convey. 49: 133.

Mortgages. 49: 133.

Renewal rights. 49: 134.

Conditions subsequent. 49: 134.

Option to purchase and rights of re-entry or reverter. 49: 134.

Effect of violation of rule. 49: 136.

**§ 2. Application of Rule to Gifts to a Class.**

In general. 73: 426.

Vested gifts. 73: 430.

Independent gifts. 73: 428.

**§ 3. Severability.**

Severability of perpetuities and forbidden trusts. 64: 634-646.

**PERSONAL INTEREST.**

Disqualifying officer from taking acknowledgment. See Acknowledgment, § 2.

Entitling party to appeal. See Appeal and Error, § 2.

Disqualifying auctioneers. See Auctions and Auctioneers, § 2.

Of guardian in dealings with ward. See Guardian and Ward, § 3.

Disqualifying petit juror. See Jury, § 3.

**PERSONAL LIBERTY.**

Guaranty of. See Constitutional Law, § 12.

**PERSONAL PROPERTY.**

See Property.

Title to, by adverse possession. See Adverse Possession, § 13.

Descent of title to. See Descent, § 2.

Fixtures as. See Fixtures, § 2.

Absolute title of life tenant with power of disposal. See Life Estates, § 2.

Sale of. See Sales.

Cotenancy in. See Tenancy in Common, § 3.

**PERSONAL SERVICE.**

See Service.

**PERSONAL UNITY.**

Resulting from marriage. See Marriage, § 1.

**PETITION.**

See Pleading.

**PETIT JURY.**

See Jury.

**PHARMACISTS.**

See Druggists.

**PHILOSOPHER'S STONE.**

Belief in philosopher's stone as insane delusion. See Insane Persons, § 1.

**PHOTOGRAPHERS.**

Tools exempt from execution. See Exemptions, § 7.

As evidence. See Evidence, § 22.

As evidence in criminal cases. See Criminal Law, § 39.

**PHYSICAL EXAMINATION.**

Of accused. See Criminal Law, § 37.

Power to compel party to civil action to submit to. See Discovery, § 2.

**PHYSICAL LAWS.**

Normal physical laws as test of proximate cause of injury. See Negligence, § 10.

**PHYSICIANS AND SURGEONS.**

DEGREE OF SKILL AND CARE REQUIRED, § 1.

LIABILITY FOR NEGLIGENCE AND MALPRACTICE, § 2.

LIABILITY FOR ACTS OF OTHERS, § 3.

OSTEOPATHY, DIVINE AND MAGNETIC, HEALING AS PRACTICE OF MEDICINE OR SURGERY, § 4.

Regulation of practice. See Constitutional Law, § 21.

Practice of medicine or surgery in violation of law may be declared a crime. See Criminal Law, § 1.

Liability of homestead for doctor's bill. See Homestead, § 3.

Malpractice as negligent homicide. See Homicide, § 11.

Occupation tax on. See Licenses, § 1.

Liability of master for medical services rendered to employee. See Master and Servant, § 4.

Privileged communications between physician and patient which are protected from compulsory disclosure on the witness-stand. See Witnesses, § 7.

§ 1. Degree of Skill and Care Required.

General rule. 93: 657.

Circumstances determining — Present state of science. 93: 660.

— Locality or place of practice. 93: 660.

— School of medicine. 93: 661.

— Established mode of treatment. 93: 661.

— Paid and gratuitous services. 93: 662.

— Contributory negligence of patient. 93: 662.

Specialists. 93: 664.

Burden of proving want of skill and care. 93: 665.

Dentists. 93: 667.

Veterinarians, persons not physicians and clairvoyants. 93: 668.

**§ 2. Liability for Negligence and Malpractice.**

Commencement and termination of relation. 93: 666.

Communication of infectious disease. 93: 669.

Wrong diagnosis of disease as venereal. 93: 669.

Promise to procure another physician. 93: 669.

Failure to procure husband's consent to operate on wife. 93: 669.

Right to waive tort and sue in assumpsit for malpractice. 134: 195.

**§ 3. Liability for Acts of Others.**

Mismanagement of those in charge of patient. 93: 665.

Druggists. 93: 665.

Other physicians. 93: 665.

Negligence of partner. 93: 666.

**§ 4. Osteopathy, Divine and Magnetic Healing as Practice of Medicine or Surgery.**

Osteopathy. 98: 742-750.

— State regulation. 98: 751.

Christian science. 98: 752.

— State regulation. 98: 753.

Magnetic healing. 98: 756.

Clairvoyance. 98: 756.

**PICKETING.**

During labor strike. See Trade Unions, § 1.

**PIERS.**

See Wharves.

**PIGS.**

See Animals.

**PILOTS.**

Regulation of charges. See Commerce, § 1.

**PIPE.**

Gas, water and sewer pipe as necessary of life. See Monopolies, § 1.

**PISTOLS.**

See Weapons.

**PLACE.**

Where arrest may be made. See Arrest, § 1.  
Of debt for purpose of garnishment. See Garnishment, § 2.

**PLACE OF CONTRACT.**

See Contracts, § 2.

**PLACE OF CRIME.**

Place where crime is committed. See Criminal Law, § 14.

**PLACE OF PERFORMANCE.**

Of contract. See Contracts, § 18.

**PLACE OF TAXATION.**

Of personal property. See Taxation, § 13.

**PLACER CLAIMS.**

Discovery and location. See Mines and Minerals, § 2.

**PLATS.**

Consideration of, in ascertaining boundaries. See Boundaries, § 1.

**PLEADING.**

**DENIALS ON INFORMATION AND BELIEF, § 1.**

**AMENDMENT STATING NEW CAUSE OF ACTION, § 2.**

**SHAM PLEADINGS, § 3.**

**POWER OF COURT TO STRIKE OUT ANSWER PRESENTING VALID DEFENSE, § 4.**

In proceedings against unknown owners. See Absentees, § 2.

Supplemental complaint to bring in personal representatives on death of party pending suit. See Abatement and Revival, § 4.

Pleading estoppel. See Estoppel, § 4.

Pleading statute of frauds. See Frauds, Statute of, § 10.

Bills of interpleader. See Interpleader, § 1.

Effect of amendment on lis pendens. See Lis Pendens, § 1.

In actions on lost instruments. See Lost Instruments, § 1.

In action for malicious prosecution. See Malicious Prosecution, §§ 1, 2.

Mandamus to compel filing or striking out. See Mandamus, § 6.

Application for writ of ne exeat. See Ne Exeat, § 4.

In action to reform instrument. See Reformation of Instruments, § 6.

In replevin suit. See Replevin, § 1.

**§ 1. Denials on Information and Belief.**

Under the codes—Denial of knowledge or information. 133: 106.

— Denial on information and belief. 133: 107.

Limitation on use of denial—Matters presumptively within knowledge of defendant in general. 133: 109.

— Matters relating to written contracts. 133: 111.

— Acts of agent. 133: 115.

— Sales. 133: 117.

— Questions of law. 133: 117.

— Matters of record. 133: 118.

— Miscellaneous instances. 133: 121.

Form of denial—Strict compliance with statutes necessary. 133: 123.

**§ 2. Amendment Stating New Cause of Action.**

General rule against. 51: 414.

Exceptions to the rule in New York. 51: 417.

Illustrations—Account and assumpsit. 51: 419.

Bill of particulars. 51: 420.

Contracts. 51: 421.

Costs and damages. 51: 422.

Debt and ejectment. 51: 423.

Equity pleading. 51: 423.

Changing form of action. 51: 424.

Fraud. 51: 425.

Guaranty. 51: 425.

Insurance. 51: 425.

Libel and negligence. 51: 426, 428, 430.

New parties. 51: 427.

Partnership and personal injuries. 51: 428.

Real actions. 51: 429.

Replevin, scire facias, slander, specific performance and statute of limitations. 51: 430.

Statutory action and stockholders' suits. 51: 431.

Torts and trespass. 51: 432.

Trover and conversion. 51: 433.

Trusts and wills. 51: 434.

Remedies. 51: 434.

Review of discretion of trial court. 51: 434.

**§ 3. Sham Pleadings.**

What constitutes. 113: 639.  
 Relief obtainable against—General rule. 113: 640.  
 — Prerequisites to right to strike out. 113: 642.  
 — What constitutes clear case of sham. 113: 643.  
 — Exceptions to the rule. 113: 645.  
 Relief as affected by subject matter or form—Nature of pleading. 113: 645.  
 — Verification of answer. 113: 646.  
 — Subject matter of answer. 113: 647-651.  
 — Subject matter of counterclaim. 113: 651.  
 Procedure on motion to strike out. 113: 651-653.

**§ 4. Power of Court to Strike out Answer Presenting Valid Defense.**

Due process of law defined. 115: 950.  
 When pleader is an alien enemy. 115: 950.  
 When pleader is in contempt—In general. 115: 952.  
 — In divorce suits. 115: 954.

**PLEDGES.**

Chattel mortgages. See Chattel Mortgages.  
 Liabilities of pledges of corporate stock. See Corporations, §§ 24, 36.  
 Remedies of pledgees of stock. See Corporations, § 28.  
 Sale of pledged corporate stock. See Corporations, § 26.  
 Care required of pawnbrokers. See Pawnbrokers.

**§ 1. In General.**

Time within which pledgor may sue to recover pledge or for an accounting. 136: 475.  
 Right of pledgee to purchase at sale of pledge. 136: 811.  
 Right to sue for the debt before exhausting the security. 73: 566.

**§ 2. Collateral Securities.**

Definition. 32: 711.  
 Title of holder. 32: 711.  
 Holder ranked as a purchaser. 32: 711.  
 To secure existing debt. 32: 712.  
 Rights of holder restricted to his interest. 32: 714.  
 Rights of creditors of pledgor. 32: 715.

Index-Digest—19

Purposes for which collateral may be held. 32: 716.  
 Duties of holder. 32: 718.  
 Liabilities of holder. 32: 723.  
 — For unlawful or unauthorized use. 32: 724.  
 Damages for conversion by holder. 32: 725.  
 Remedies against third persons. 32: 726.  
 Remedies of holder—Suit for debt. 32: 727.  
 — Suit on choses in action. 32: 728.  
 — Foreclosure and sale of pledge. 32: 729.  
 — Implied right to sell pledge. 32: 730.

**§ 3. Care Required of Pledgee.**

General rule. 83: 392.  
 Liability for theft. 83: 393.  
 — Pawnbroker. 83: 394.  
 Care of collateral securities. 83: 394.

**PLUMBING.**

Regulations may declare violation a crime. See Criminal Law, § 1.

**PLURALITY OF SUBJECTS.**

In title of statute. See Statutes.

**POISON.**

Killing by administering. See Homicide, § 10.  
 Effect of clause in accident policy excepting death from poison. See Insurance, § 10.

**POKER-TABLES.**

As gambling devices. See Gaming, § 5.

**POLES.**

Electric poles in streets and highways and across private property. See Electricity, § 2.  
 Telegraph and telephone poles in streets and highways. See Telegraphs and Telephones, § 1.

**POLICEMAN.**

Right to arrest with or without warrant and mode of making arrest. See Arrest, § 1.

**POLICE POWER.**

Of state and nation. See Constitutional Law, §§ 4-11.  
 Of cities. See Municipal Corporations, §§ 3-6.  
 Of cities over street railroads. See Street Railroads, § 1.  
 Taxing power. See Taxation, § 2.

**POLICY OF INSURANCE.**

See Insurance, §§ 5-12.  
 In mutual or membership societies. See Beneficial Associations, § 4.

**POLITICAL RIGHTS.**

See Civil Rights.

Jurisdiction of equity to protect and enforce.  
See Equity, § 1.

**POLLING PLACES.**

See Elections, § 3.

**POLLUTION OF WATER.**

Of wells and underground waters by adjoining land owners. See Adjoining Land Owners, § 2.

Of navigable waters. See Navigable Waters, § 9.

By debris. See Waters and Watercourses, § 7.

By municipalities. See Waters and Watercourses, § 8.

**POLYGAMY.**

Edmund's anti-polygamy law. See Bigamy, § 1.

**POOL.**

As gambling game. See Gaming, § 4.

**POORHOUSES.**

Uses and trusts for. See Charities, § 1.

**POPULATION.**

License tax based on. See Licenses, § 4.

**POSSE COMITATUS.**

Right of sheriff to call, duty to join, and right of member to claim reward. See Sheriffs and Constables, § 7.

**POSSESSION.**

Adverse possession. See Adverse Possession.  
Evidence of possession of stolen property.  
See Criminal Law, § 28.

Duty of landlord to put tenant in possession.  
See Landlord and Tenant, § 3.

By tenant. See Landlord and Tenant, § 4.

Right of cotenant of mine to possession. See Mines and Minerals, § 12.

Necessary to maintain suit to quiet title. See Quieting Title, § 1.

Necessary in replevin suit. See Replevin, § 1.

Of land as notice to purchaser of rights of possessor. See Vendor and Purchaser, § 5.

**POSSIBILITIES.**

Validity of sale of. See Sale, § 3.

Assignment of. See Assignment, § 3.

**POSITIVE CONSEQUENCES.**

As constituting proximate cause of negligent injury. See Negligence, § 10.

**POSTAL CARDS.**

Offense of mailing dunning cards. See Post-offices, § 3.

**POSTAL CLERKS.**

As passengers. See Carriers, § 32.

**POSTHUMOUS CHILDREN.**

Rights of. See Infants, § 10.

Provisions for, in wills. See Wills, § 34.

**POSTNUPTIAL SETTLEMENTS.**

In fraud of creditors. See Fraudulent Conveyances, § 7.

Right of creditors to attack. See Husband and Wife, § 3.

**POSTOFFICE.**

Power to declare certain use of mails criminal. See Criminal Law, § 1.

Exemptions of mail carriers. See Exemptions, § 3.

**§ 1. Opening Mail.**

Offense of opening mail to ascertain contents. 58: 603.

**§ 2. Theft of Mail Matter.**

Secreting, embezzling or destroying letters. 58: 602.

Stealing contents of letters. 58: 602.

Stealing decoy letter. 58: 603.

What are "letters intended to be conveyed by mail." 58: 603.

**§ 3. Criminal Use of Mails.**

Obscene matter. 58: 595.

Dunning letters or cards. 58: 598.

Threatening letters. 58: 600.

Lotteries and gift enterprises. 58: 600.

Fraudulent schemes. 58: 601.

Stealing or embezzling letters. 58: 602.

Criminal libel. 58: 602.

**POSTPONING SENTENCE.**

Authority to postpone indefinitely. See Criminal Law, § 65.

**POULTRY.**

See Animals.

**POUNDS.**

Summary impounding and sale of strayed animals. See Animals, § 6.

**POWDER MAGAZINE.**

Liability of persons maintaining. See Explosives, § 1.

**POWER OF APPOINTMENT.**

Life estate with power of appointment. See Life Estates, § 2.



**POWER OF ATTORNEY.**

By married women. See Husband and Wife, § 12.  
 Joint power. See Principal and Agent, § 10.  
 Construction of power executed by married woman. See Principal and Agent, § 11.  
 Revocation of power. See Principal and Agent, § 12.

**POWER OF SALE.**

Life estate with power of sale. See Life Estates, § 2.  
 In mortgage. See Mortgages, § 18.  
 Sales under power in mortgage or trust deed. See Mortgages, § 18.  
 Who may execute power of sale in will. See Wills, § 44.

**POWERS.**

See Authority.

Of corporations. See Corporations, § 45.  
 Who may execute power of sale in will. See Wills, § 44.

**PRACTICE AND PROCEDURE.**

See specific titles.

**PRACTICE OF MEDICINE.**

See Physicians and Surgeons.

**PRECATORY TRUSTS.**

In devise of life estate. See Life Estates, § 2.  
 Wills creating. See Wills, §§ 37-39.

**PRECEDENTS.**

Limitations on doctrine of stare decisis. See Courts, § 6.

**PRE-EMPTORS.**

Right to sell or mortgage interest. See Public Lands, § 4.

**PREFERENCES.**

By insolvents. See Assignments for Benefit of Creditors, § 2; Insolvency, § 1.  
 By insolvent corporation. See Corporations, § 58.

**PREFERRED STOCK.**

Rights of holders of. See Corporations, § 19.

**PREJUDICE.**

Necessary to give right to appeal. See Appeal and Error, § 2.  
 As insane delusions. See Insane Persons, § 1.  
 Disqualifying petit juror. See Jury, § 3.  
 As insane delusions avoiding will. See Wills, § 17.

**PREMISES.**

Duty of master to keep premises safe for servant. See Master and Servant, § 9.

**PREROGATIVE WRITS.**

No exeat aa. See No Exeat, § 1.

**PRESCRIPTION.**

See Adverse Possession; Limitation of Actions.  
 Liability for negligence in filling physician's prescription. See Druggists, § 1.

**PRESENCE OF JUDGE.**

At criminal trial. See Criminal Law, § 44.

**PRESENTATION.**

Of certified check for payment. See Banks and Banking, § 5.

**PRESERVATION OF LIFE.**

Diligence required to preserve life. See Negligence, § 2.

**PRESUMPTIONS.**

In criminal cases. See Criminal Law, § 21.  
 In civil cases. See Evidence, § 5.

**PRETERMITTED HEIRS.**

Rights of. See Wills, § 35.

**PREVAILING PARTIES.**

Right to appeal. See Appeal and Error, § 2.

**PRINCIPAL AND AGENT.**

AGENCY BETWEEN PERSONS JOINTLY LIABLE, § 1.  
 SUBAGENTS, § 2.  
 AUTHORITY OF AGENT, § 3.  
 — TO BORROW MONEY, § 4.  
 — LIMITING TO PROPERTY OWNED BY PRINCIPAL, § 5.  
 ACTS BEYOND SCOPE OF AUTHORITY, § 6.  
 AGENT'S PURCHASE OF PRINCIPAL'S PROPERTY, § 7.  
 RATIFICATION AND RESCISSION, § 8.  
 NOTICE TO AGENT AS NOTICE TO PRINCIPAL, § 9.  
 JOINT POWER OF ATTORNEY, § 10.  
 CONSTRUCTION OF POWER EXECUTED BY MARRIED WOMAN, § 11.  
 REVOCATION OF POWER OF ATTORNEY, § 12.  
 LIABILITY FOR TORTS OF AGENT, § 13.  
 LIABILITY FOR UNAUTHORIZED CONTRACTS OF AGENT, § 14.  
 CRIMINAL LIABILITY FOR ACTS OF AGENT, § 15.  
 PERSONAL LIABILITY OF AGENT TO THIRD PERSONS, § 16.  
 SAME, § 17.  
 ACTIONS, § 18.  
 — BY UNDISCLOSED PRINCIPAL, § 19.

See, also, Brokers; Factors.

Validity of acknowledgment takes before agent. See Acknowledgment, § 2.  
 Certificate of acknowledgment by person executing instrument as attorney in fact. See Acknowledgment, § 4.  
 Agency of auctioneer. See Auctions and Auctioneers, § 2.

Care required of bank acting as agent. See Banks and Banking, §§ 16, 18.  
 Accommodation paper made or indorsed by agents. See Bills and Notes, § 1.  
 Liability of charitable institutions for torts of agents. See Charities, § 4.  
 Declarations of agent as evidence. See Evidence, § 15.  
 Power of attorney of married woman. See Husband and Wife, § 12.  
 Agency of wife for husband. See Husband and Wife, §§ 14, 15.  
 Agents as vice-principals. See Master and Servant, § 19.  
 Mutual agency of partners. See Partnership, §§ 2, 9.  
 Right of trustee to act through agent. See Trusts, § 9.  
 Revocation of will through agent. See Wills, § 18.

### § 1. Agency Between Persons Jointly Liable.

In general. 65: 683.  
 Express agency. 65: 684.  
 Part payment or acknowledgment of barred claim. 65: 685.  
 — Before statute has run. 65: 687.  
 Maker and indorser of note. 65: 690.  
 Principal and surety. 65: 691.  
 Husband and wife. 65: 691.  
 Executors and administrators. 65: 691.  
 Acquiescence in acts of codebtor. 65: 692.

### § 2. Subagents.

Power to appoint. 50: 110.  
 Implied authority. 50: 111.  
 Express authority. 50: 111.  
 Ministerial acts. 50: 112.  
 Necessity. 50: 113.  
 Acquiescence or tacit consent. 50: 114.  
 Arbitrators. 50: 114.  
 Attorneys and auctioneers. 50: 115.  
 Brokers and collection agencies. 50: 116.  
 Factors. 50: 117.  
 Insurance agents. 50: 117.  
 Municipal corporations. 50: 118.  
 Corporations. 50: 119.  
 Public trusts. 50: 119.  
 Authority and subagent. 50: 119.  
 Implied notice of acts of subagent. 50: 120.  
 Ratification of acts of subagents. 50: 120.  
 Rights, duties and liabilities. 50: 121.  
 Liability of agent. 50: 121.  
 — Public agents. 50: 122.  
 Liability of principal. 50: 122, 123.

Subagent accountable only to agent. 50: 124.

### § 3. Authority of Agent.

General agent. 16: 493.  
 Agent authorized to sell and collect. 16: 494.

### § 4. — To Borrow Money.

In general. 29: 93.  
 Implied power. 29: 94.  
 Superintendent of mine. 29: 96.  
 Master of vessel. 29: 96.  
 Cashier of bank. 29: 96.  
 Ratification of loan. 29: 96.

### § 5. — Limiting to Property Owned by Principal.

In general. 35: 593.  
 Power may include after-acquired property. 35: 594.  
 Power to buy and sell does not include property previously owned. 35: 595.

### § 6. Acts Beyond Scope of Authority.

Generally principal is not bound. 6: 37.  
 When agent may disregard orders and bind principal owing to emergency. 6: 37, 38.

### § 7. Agent's Purchase of Principal's Property.

Application of equitable principles. 80: 555.  
 Agent to sell cannot buy. 80: 557.  
 General rule and reasons for it. 80: 560.  
 Various kinds of agents. 80: 562.  
 Attorney in fact. 80: 562.  
 Auctioneer and factor. 80: 563.  
 Validity of unauthorized sale. 80: 563.  
 Ratification. 80: 563.  
 Remedy of principal. 80: 563.  
 When agent may buy. 80: 565.

### § 8. Ratification and Rescission.

Effect of ratification of unauthorized contract of agent. 5: 109-114.  
 Power of principal to ratify criminal acts. 5: 618-621.  
 Right of principal to rescind contract of agent having adverse interest or acting as the secret agent of another. 7: 279-283.

**§ 9. Notice to Agent as Notice to Principal.**

General rule. 24: 228.  
Knowledge which is imputed. 24: 229-233.

**§ 10. Joint Power of Attorney.**

Construction. 22: 726.

**§ 11. Construction of Power Executed by Married Woman.**

Power of attorney to release dower. 84: 765.  
Power to convey lands. 84: 766.  
When applied to separate estate as well as right of dower. 84: 766.  
Strict construction. 84: 767.  
Power to borrow as including power to mortgage. 84: 767.  
Power to sell as including power to dedicate. 84: 768.  
Difference between power to sell and power to convey. 84: 768.  
Power to convey interest as heir does not include community property. 84: 768.  
General words restricted by special. 84: 768.

**§ 12. Revocation of Power of Attorney.**

When revocable. 110: 855.  
When irrevocable. 110: 856.  
Death of sole principal—Effect on subsequent act of attorney. 110: 859.  
— Power coupled with interest. 110: 860.  
Death of joint principal. 110: 861.  
Marriage of principal. 110: 861.  
Insanity of principal. 110: 862.  
Acts working revocation. 110: 863.  
Notice of revocation. 110: 864.

**§ 13. Liability for Torts of Agent.**

In general. 88: 786.  
Acts within scope of employment. 88: 787.  
— Liability of corporations. 88: 788.  
Acts outside of scope of employment. 88: 789.  
Disobedience of orders immaterial. 88: 790.  
Motive of agent immaterial. 88: 790.  
— Willful and malicious acts. 88: 790.

Acts not in execution of employment. 88: 792.

Malicious prosecution. 88: 793.  
Libel and fraud. 88: 794.  
Assault and battery. 88: 795.  
— By agents of carriers. 88: 797.

**§ 14. Liability for Unauthorized Contracts of Agent.**

Party dealing with agent must ascertain extent of authority. 88: 780.  
— Special authority to be strictly construed. 88: 781.  
— Where warrant of authority is written. 88: 781.  
— General agencies—Principal bound by apparent authority. 88: 782.  
— Effect of secret instructions. 88: 783-786.

**§ 15. Criminal Liability for Acts of Agent.**

General rule. 88: 797.  
Acts in violation of instructions. 88: 798.  
Exceptions to the general rule. 88: 798.

**§ 16. Personal Liability of Agent to Third Persons.**

In contract. 22: 508; 13: 631, 632.  
— Where contract is personal or agency concealed. 22: 508.  
— Where agent mistakenly exceeds authority. 22: 509.  
— Public agent disclosing his authority. 22: 510.  
— Agent failing to bind principal. 22: 510.  
— Agent for foreign principal. 22: 511.  
— Agent paying over money to principal. 22: 512.  
Torts—Nonfeasance and misfeasance. 22: 512.  
— Knowledge or direction of principal no defense. 22: 514.

**§ 17. Same.**

Contracts. 48: 914.  
Unauthorized acts. 48: 916.  
Torts and fraud. 48: 920.  
Trover and conversion. 48: 922.  
Acts of inferior agents. 48: 922.  
Principal cannot authorize tort. 48: 922.  
Negligence. 48: 923-926.

**§ 18. Actions.**

Right of principal to waive tort and sue in assumpsit for fraud of agent. 134: 194.

Denials of acts of agent on information and belief. 133: 115, 116.

When statute begins to run on action to compel agent to account. 136: 487.

**§ 19. — By Undisclosed Principals.**

Contracts of agent generally. 55: 916.

Contracts under seal. 55: 918.

Negotiable instruments. 55: 919.

Where contract affirms that contracting agent is a principal. 55: 919.

Contracts based on solvency, skill or special confidence. 55: 920.

Notice of election by principal to enforce contract. 55: 920.

Defenses. 55: 921.

Principal is bound by all burdens and conditions. 55: 922.

**PRINCIPAL AND SURETY.**

IN GENERAL, § 1.

THE CONTRACT, § 2.

LIABILITY OF DIFFERENT SETS OF SURETIES, § 3.

DUTY OF CREDITOR TO SURETY, § 4.

PROCEEDINGS BY SURETY TO COMPEL PRINCIPAL TO PERFORM HIS OBLIGATION, § 5.

ACCRUAL OF SURETY'S CAUSE OF ACTION AGAINST PRINCIPAL, § 6.

CONTRIBUTION BETWEEN COSURETIES, § 7.

SUBROGATION, § 8.

DISCHARGE OF SURETY, § 9.

Right of sureties to appeal. See Appeal and Error, § 2.

Sureties on appeal bonds. See Appeal and Error, § 4.

Sureties on bonds of county treasurer. See Counties, § 4.

Suretyship and guaranty distinguished. See Guaranty, § 1.

Admissibility and effect against surety of judgment against principal. See Judgment, § 43.

Sureties on bonds of city officers. See Municipal Corporations, § 11.

Sureties on bonds of notaries. See Notaries, § 2.

Sureties on bonds of public officers. See Officers, §§ 18-28.

Reformation of contract of suretyship. See Reformation of Instruments, § 1.

Sureties on bonds of sheriffs and constables. See Sheriffs and Constables, §§ 5, 6.

Right of surety to subrogation. See Subrogation, § 3.

Sureties on bonds of tax collectors. See Taxation, § 14.

**§ 1. In General.**

Conditions precedent to right of surety to pay debt of principal. 134: 559-563.

Statutory remedies of surety merely cumulative. 134: 565.

**§ 2. The Contract.**

Validity of bond not executed by all of the parties. 40: 51, 52.

Difference between contract of suretyship based on a valuable consideration and one entered into gratuitously. 98: 844.

Effect of forgery of name of principal or of another surety on liability of surety. 8: 246, 247.

**§ 3. Liability of Different Sets of Sureties.**

Primary liability. 70: 443.

Cosureties—Different bonds—Contribution. 70: 444.

Who are not cosureties—Contribution. 70: 447.

Controlling liability by contract. 70: 450.

Contribution—Basis of right and liability. 70: 450.

Division of loss. 70: 451.

Apportionment of loss according to amount of penalty of different bonds. 70: 451.

**§ 4. Duty of Creditor to Surety.**

To attempt collection of debt. 115: 85.

To present claim against bankrupt or decedent. 115: 86.

Effect of delay in suing on principal obligation. 115: 88.

Effect of request by surety that creditor sue. 115: 89.

— When principal is or becomes insolvent. 115: 93.

To give surety notice of default of principal. 115: 94.

Effect of surrender of funds by creditor. 115: 95.

Effect of making payments to principal which creditor had a right to withhold. 115: 95.

When holding property or funds of principal. 115: 95.

Care and management of collateral securities. 115: 100.

Loss of lien by negligence. 115: 101.  
Loss of lien by operation of law. 115: 101.

**§ 5. Proceedings by Surety to Compel Principal to Perform His Obligation.**

Right to proceed in equity after maturity of debt. 117: 36.  
Right to compel creditor to sue principal. 117: 37.  
Insolvency of principal or surety. 117: 38.  
Receivership proceedings against principal. 117: 38.  
Right to compel payment out of principal's estate. 117: 39.  
Right to set aside principal's fraudulent conveyance. 117: 39.  
Foreclosure of indemnity mortgage. 117: 40.  
Dissolution of partnership. 117: 41.

**§ 6. Accrual of Surety's Cause of Action Against Principal.**

On promise implied from payment of debt. 134: 557.  
Necessity that surety be legally liable. 134: 559.  
Necessity for demand or suit before payment. 134: 561.  
Necessity that payment be actually made. 134: 561.  
Effect of giving note or other obligation. 134: 561.  
Effect of payment of debt before maturity. 134: 563.  
Effect of payment of barred debt. 134: 564.  
Effect of code remedies on common-law remedies. 134: 565.  
Accrual of cause in equity—Subrogation. 134: 566.  
— Equitable rights of surety against principal. 134: 566.  
— Right of surety to compel principal to pay debt. 134: 568.

**§ 7. Contribution Between Cosureties.**

Right to contribution in general. 10: 639.  
Accrual of right. 10: 640.  
Insolvency of principal. 10: 641.  
Payment of debt barred by limitations. 10: 641.  
Right as affected by indemnity to surety. 10: 642.  
Where surety joins at request of cosurety. 10: 642.

Discharge of surety in bankruptcy. 10: 643.

Contribution from estate of deceased surety. 10: 644.

Costs and expenses as matter for contribution. 10: 644.

Apportionment of contribution among sureties. 10: 644.

Remedies for recovery of contribution, parties and defenses. 10: 645, 646.

When statute of limitations bars right. 10: 647.

**§ 8. Subrogation.**

Subrogation of surety and legal right to recover sum paid distinguished. 134: 566.

**§ 9. Discharge of Surety.**

Contract strictly construed. 6: 458.  
Imposition of new duties on principal. 6: 458.

Immaterial alteration of principal's contract. 6: 459.

Alteration of principal's contract by legislation. 6: 460.

Matters existing at or prior to entering into the contract. 63: 327, 338.

What will release surety. 28: 691, 692.

**PRINTERS.**

Tools exempt from execution. See Exemptions, § 7.

**PRIORITY.**

Between assignees. See Assignments, § 4.

Of mortgage for future advances. See Mortgages, § 5.

**PRISONS.**

Reformatory institutions for juvenile delinquents. See Reformatories, § 1.

**PRIVATE CARRIERS.**

Distinguished from common carriers. See Carriers, § 1.

**PRIVATE CARS.**

Liability of railroads hauling. See Carriers, § 43; Railroads, § 12.

**PRIVATE INDIVIDUAL.**

Quo warranto at instance of. See Quo Warranto, § 1.

**PRIVATE LAWS.**

What are. See Statutes, § 6.

**PRIVATE NUISANCE.**

See Nuisance, §§ 1-3.

**PRIVATE RAILROADS.**

As additional servitudes. See Railroads, § 3.

**PRIVATE ROADS.**

See Highways; Public Roads.

**§ 1. Rights and Obligations of Owner of Way or Road.**

Location and change thereof. 95: 322, 323.

Deviation from granted way. 95: 324.

Use of road or way. 95: 325.

Right to extend use to other land. 95: 327.

Right and duty to construct and repair. 95: 328.

Right to fence. 95: 329.

**§ 2. Rights and Obligations of Owner of Fee.**

Right to use. 95: 318.

Right to obstruct. 95: 318.

Right to fence and gate. 95: 320, 321.

Duty to fence and gate. 95: 320.

General duties and obligations. 95: 322.

**PRIVATE SURVEY.**

Conclusiveness of. See Boundaries, § 9.

**PRIVATE USE.**

Of public streets. See Municipal Corporations, § 22.

**PRIVILEGED COMMUNICATIONS.**

What communications are privileged from responsibility for libel or slander. See Libel and Slander, §§ 16-23.

Between attorney and client, physician and patient and husband and wife which are protected from compulsory disclosure. See Witnesses, §§ 6-9.

**PRIVILEGES OR IMMUNITIES.**

Clause of constitution construed. See Constitutional Law, § 19.

**PRIVITY.**

Right to recover for negligence where there is no privity. See Negligence, § 7.

**PROBABLE CAUSE.**

For prosecution of civil or criminal action. See Malicious Prosecution, §§ 1, 2.

**PROBATE COURTS.**

Authority to punish contempt. See Contempt, § 4.

**PROBATE OF WILL.**

Foreign will. See Wills, § 24.

Of lost or destroyed will. See Wills, §§ 25-28.

Holographic will. See Wills, § 9.

**PROBATE SALES.**

See Executors and Administrators, §§ 20-22.

**PROCEEDS.**

Of exempt property. See Exemptions, § 6.

Exemption of proceeds of homestead. See Homestead, § 2.

Of insurance policy. See Insurance, §§ 40-42.

**PROCESS.**

JURISDICTIONAL DEFECTS, § 1.

RETURN, § 2.

— CONCLUSIVENESS, § 3.

EXEMPTION FROM SERVICE, § 4.

JURISDICTIONAL DEFECTS IN SERVICE, § 5.

WHO MAY SERVE, § 6.

WHAT CONSTITUTES ABUSE OF PROCESS, § 7.

LIABILITY FOR ABUSE OF PROCESS AND REMEDIES, § 8.

See, also, Notice.

Mode of serving process on nonresidents. See Absentees, § 1.

Supplemental summons to bring in personal representatives on death of party pending suit. See Abatement and Revival, § 4.

Mode of service on foreign corporation. See Corporations, § 74.

Service on nonresidents. See Courts, § 1.

Return as evidence. See Evidence, § 21.

Notice to quit. See Forcible Entry and Detainer, § 3.

Revenue stamps on. See Internal Revenue, § 1.

False return as ground for collateral attack on judgment. See Judgment, § 26.

Setting aside judgment for false return. See Judgment, § 21.

Writ of ne exeat. See Ne Exeat, §§ 1-4.

Writ of scire facias. See Scire Facias, § 1.

Right of officer to indemnity before execution of civil process. See Sheriffs and Constables, § 3.

**§ 1. Jurisdictional Defects.**

Omission of seal. 40: 430, 431, 432.

Noncompliance with statute. 40: 433.

Formal defects and omissions. 40: 434.

**§ 2. Return.**

Definition and statement of contents. 129: 848.

**§ 3. — Conclusiveness.**

In general. 124: 757.

Error as to matters presumptively unknown to officer. 124: 759.

Error as to defendant's residence. 124: 759.  
 Error as to date of service. 124: 759.  
 Error as to name of defendant. 124: 760.  
 When relief is sought after judgment. 124: 760.  
 Relief from error. 124: 764.  
 Collateral attack on judgment based on false return. 124: 768.  
 Sufficiency of evidence to impeach return. 124: 770.

#### § 4. Exemption from Service.

Ambassadors and consuls. 76: 534.  
 Congressmen. 76: 534.  
 State legislators. 76: 534.  
 Judges. 76: 535.  
 Lawyers attending court. 76: 535.  
 Soldiers and militiamen. 76: 535.  
 Parties and witnesses. 76: 535.  
 Nonresident parties. 76: 536.  
 Nonresident witnesses. 76: 538.  
 Decoyed or kidnaped persons. 76: 540.  
 Parties under criminal process. 76: 540.  
 — Nonresidents. 76: 541.  
 Effect of service upon exempt person. 76: 542.

#### § 5. Jurisdictional Defects in Service.

General rule. 61: 485.  
 Who may serve. 61: 487.  
 Time to serve. 61: 487.  
 Premature entry of judgment. 61: 488.  
 Place of service. 61: 489.  
 Who may be served. 61: 490.  
 Service on corporation. 61: 490.  
 Service on infants and lunatics. 61: 492.  
 Omission of some act. 61: 492.  
 Service of new or amended pleadings. 61: 493.  
 Constructive service. 61: 494.  
 Service by publication. 61: 494.  
 Proof of jurisdiction. 61: 475.

#### § 6. Who may Serve.

Attorney or agent of plaintiff. 102: 694.

#### § 7. What Constitutes Abuse of Process.

Nature and elements. 86: 398.  
 Execution and attachment. 86: 400.  
 — Injury to or misuse of property. 86: 402.

— Exempt property. 86: 403.  
 Distress warrant. 86: 404.  
 Replevin. 86: 405.  
 Writ of possession. 86: 405.  
 Foreclosure and sale. 86: 405.  
 Criminal process—Arrest. 86: 405.  
 — To collect debt. 86: 406.

#### § 8. Liability for Abuse of Process and Remedies.

Who is liable. 86: 407.  
 Remedies in general. 86: 408.  
 — Damages. 86: 410.

#### PROCLAMATION.

Election proclamations. See Elections, § 4.

#### PRODUCTIVENESS OF MINE.

As evidence of discovery. See Mines and Minerals, § 3.

#### PROFITS.

Liability of cotenant for. See Tenancy in Common, § 6.

#### PROHIBITED DEBTS.

What constitutes indebtedness prohibited by law. See Municipal Corporations, § 13.

#### PROHIBITION.

NATURE OF WRIT, § 1.  
 GROUNDS FOR ISSUANCE, § 2.  
 COURTS WHICH MAY ISSUE, § 3.  
 TO WHAT COURTS WRIT MAY ISSUE, § 4.  
 GROUNDS FOR REFUSING WRIT, § 5.  
 PROCEEDINGS TO OBTAIN WRIT, § 6.  
 OPERATION AND EFFECT OF WRIT, § 7.  
 Of cemeteries. See Cemeteries, § 2.  
 Of liquor traffic. See Intoxicating Liquors.  
 To try title to office. See Officers, § 12.

#### § 1. Nature of Writ.

Definitions and descriptions. 111: 930.

#### § 2. Grounds for Issuance.

Want of jurisdiction—General rule. 111: 944.  
 — Original want of jurisdiction of subject matter. 111: 944.  
 — Dependent on time and place of action. 111: 945.  
 — From disqualification of judge. 111: 945.  
 — Jurisdiction of person. 111: 945.  
 Loss of jurisdiction—General rule. 111: 946.  
 — By appeal or error. 111: 947.  
 — By application for removal of cause. 111: 948.  
 Excess of jurisdiction. 111: 948.

- Contempt. 111: 950.
- Criminal prosecutions. 111: 952.
- To prevent enforcement of writ or order. 111: 952.

### § 3. Courts Which may Issue.

- At common law. 111: 932.
- General principle controlling American courts. 111: 932.
- Constitutional and statutory provisions. 111: 933.
- Federal courts. 111: 934.

### § 4. To What Courts Writ may Issue.

- General rule. 111: 935.
- Courts exercising ministerial authority. 111: 937.
- Courts-martial. 111: 936.
- Courts exercising legislative authority. 111: 938.
- Officers of court. 111: 938.
- De facto officers and tribunals without authority. 111: 939.
- Tribunals and boards exercising judicial or quasi-judicial functions. 111: 940.
- Boards exercising legislative or ministerial functions. 111: 941.
- Individual officers. 111: 941.
- Referees and arbitrators. 111: 942.
- Election boards. 111: 942.
- Tax assessment and levy boards and officers. 111: 943.

### § 5. Grounds for Refusing Writ.

- Discretion of court to deny writ. 111: 954.
- Jurisdiction in court assailed. 111: 955.
- Mere irregularity or error. 111: 956.
- Errors in deciding jurisdictional questions. 111: 958.
- Existence of other remedy. 111: 960.

### § 6. Proceedings to Obtain Writ.

- Necessity for objection in court a quo. 111: 965.
- Time to apply for writ. 111: 968.
- Who may apply for writ. 111: 970.
- Parties defendant. 111: 971.
- Application for writ. 111: 971.
- Notice or order to show cause. 111: 973.
- Answer or return. 111: 974.
- Evidence. 111: 970.

### § 7. Operation and Effect of Writ.

- Alternative writ or order to show cause. 111: 977.
- Absolute writ. 111: 978.

### PROHIBITION LAW.

- Laws prohibiting sale of liquor. See Intoxicating Liquors.

### PROMISES.

- See Contracts.

### PROMISE TO PAY DEBT OF ANOTHER.

- What is. See Frauds, Statute of, §§ 2, 3.

### PROMISE TO REPAIR.

- Effect of master's promise to repair on assumption of risk. See Master and Servant, §§ 23, 25.

### PROMISSORY NOTES.

- See Bills and Notes.

### PROMOTERS.

- Rights and liabilities of promoters of corporation. See Corporations, § 4.
- Liability of corporation for contracts of. See Corporations, § 5.

### PROOF OF DEATH.

- Necessity and requisites. See Insurance, § 37.

### PROPAGATION.

- Of fish and wild game. See Fish; Game.

### PROPER NAMES.

- As trade names. See Trademarks and Trade Names, § 2.

### PROPERTY.

- Subject to abandonment. See Abandonment, § 1.
- Proceedings against unknown owners. See Absentees, § 2.
- Reasonableness of use of land limited by rights of adjoining owners. See Adjoining Land Owners, § 2.
- Subject to adverse possession. See Adverse Possession, §§ 1, 2.
- Dogs as property. See Animals, § 2.
- Property rights of members of associations. See Associations, § 1.
- Subject to attachment. See Attachment, § 3.
- Intermixture of goods of same kind belonging to different owners. See Confusion of Goods, § 1.
- Corporate property. See Corporations, § 52.
- Covenants restricting use of land. See Covenants, § 3.
- Descent of. See Descent, §§ 1, 2.
- Subject to ejectment. See Ejectment, § 3.



Subject to embezzlement. See Embezzlement, § 3.  
 Subject to execution. See Execution, § 3.  
 In fish. See Fish, § 1.  
 Subject to gift causa mortis. See Gifts, § 3.  
 Killing in defense of. See Homicide, § 6.  
 Property rights of married women. See Husband and Wife, §§ 17, 18.  
 Liability of hotel-keeper for property of guest. See Innkeepers, § 4.  
 Subject to innkeeper's lien. See Innkeepers, § 5.  
 Subject to interpleader. See Interpleader, § 2.  
 Subject to judgment lien. See Judgment, § 44.  
 Subject to larceny. See Larceny, § 2.  
 Subject to lis pendens. See Lis Pendens, § 1.  
 Subject to mechanic's lien. See Mechanics' Liens, §§ 3-5.  
 Description of property in mortgage. See Mortgages, § 8.  
 Subject to replevin. See Replevin, § 2.  
 Subject to tax. See Taxation, § 6.  
 In percolating water. See Waters and Watercourses, § 10.  
 In ice. See Waters and Watercourses, § 15.

#### § 1. In General.

In secret processes and trade secrets. 133: 759.  
 Rights of owner of surface as against owner of minerals thereunder. 135: 131-152.

#### PROSPECTING.

Performance of assessment work on mineral claim. See Mines and Minerals, § 9.

#### PROSPECTUSES.

Fraudulent representations in. See Fraud, § 3.

#### PROTEST.

Of foreign bill of exchange. See Bills and Notes, § 17.

#### PROVINCE OF JURY.

In criminal cases. See Criminal Law, § 50.

#### PROVOCATION.

Reducing homicide to manslaughter. See Homicide, § 3.  
 As affecting law of self-defense. See Homicide, §§ 6, 7.

#### PROWLERS.

Right to arrest without warrant. See Arrest, § 1.

#### PROXIMATE CAUSE.

Of injuries by or to animals. See Animals, § 10.  
 Of injury from electric wires. See Electricity, § 1.  
 Of loss insured against in fire, marine or accident policy. See Insurance, § 35.  
 Of negligent injury. See Negligence, § 10.

#### PROXY.

To vote stock. See Corporations, § 32.

#### PUBLIC ADMINISTRATOR.

Right to contest will. See Wills, § 22.

#### PUBLICATION.

Contemptuous publications in newspapers. See Contempt, § 3.  
 Of libel. See Libel and Slander, § 10.

#### PUBLIC CORPORATIONS.

Quo warranto against. See Quo Warranto, § 1.

#### PUBLIC LANDS.

Abandonment of claim by making other or subsequent applications. See Abandonment, § 3.  
 Acquisition of adverse title to. See Adverse Possession, § 1.  
 Contests between entrymen and mine claimants. See Mines and Minerals, § 2.  
 Investigation of alleged discovery of minerals in national forests. See Mines and Minerals, § 3.  
 Mortgage by pre-emptor or homestead. See Mortgages, § 4.

#### § 1. Wife's Interest in Location.

Interest of wife in lands occupied by husband during coverture and subsequently patented to him. 111: 1018.

#### § 2. Cancellation of Entry.

Right of entryman to notice and hearing before cancellation of entry. 75: 880.

#### § 3. Alienability of Settler's Rights.

Alienation prohibited. 31: 197.  
 Mortgage permissible. 31: 197, 198.

#### § 4. Mortgages by Pre-emptors.

In general. 52: 249; 31: 198.  
 Homesteaders. 52: 252.

#### PUBLIC MARKETS.

Power of cities to establish and regulate markets. See Municipal Corporations, § 2.

#### PUBLIC NUISANCE.

See Nuisance, §§ 7-10.

#### PUBLIC POLICY.

Contracts of newspapers against public policy. See Newspapers, § 1.

#### PUBLIC PROPERTY.

Acquisition of title to by adverse possession. See Adverse Possession, § 1.  
 Taxation of. See Taxation, § 6.

**PUBLIC ROADS.**

See Highways; Private Roads.

**PUBLIC SCHOOLS.**

See Schools and School Districts.

**PUBLIC TRIAL.**

What constitutes and right of accused to.  
See Criminal Law, § 43.

**PUBLIC USE.**

What constitutes. See Eminent Domain, § 3.  
Eight of courts to determine existence of.  
See Eminent Domain, § 9.

**PUBLIC UTILITIES.**

Police power to regulate persons engaged in supplying. See Constitutional Law, § 11.

**PUFFING.**

At auction sale. See Auctions and Auctioneers, § 6.

**PULLMAN CARS.**

See Sleeping-cars.

**PUNISHMENT.**

Cruel and unusual punishment for crime. See Criminal Law, § 2.  
Mode of punishing corporations for crime. See Criminal Law, § 66.  
For kidnaping. See Kidnaping, § 1.  
Of schoolchildren. See Schools and School Districts, § 1.

**PUNITIVE DAMAGES.**

See Damages, §§ 9, 10.

**PUPILS.**

Punishment of. See School and School Districts, § 1.

**PURCHASERS.**

Effect of reversal of judgment on rights of purchaser from party against whom judgment was reversed. See Appeal and Error, § 8.  
Who may not purchase at execution sale. See Execution, § 9.  
Persons incapacitated from purchasing at judicial sale. See Judicial Sales, § 3.

**PURCHASER'S LIEN.**

Lien of purchaser of land. See Vendor and Purchaser, § 13.

**PURE FOOD.**

See Adulteration; Food; Health.

**PURGING CONTEMPT.**

Purging contempt for nonpayment of alimony. See Contempt, § 2.

**PURPRESTURES.**

See Nuisances.

Enjoining. See Injunction, § 6.  
Obstruction of navigation by wharves, piers, cribs and rafts. See Navigable Waters, § 10.

**QUALIFICATIONS.**

Of grand jurors. See Grand Jury, § 1.  
Of petit jurors. See Jury, § 2.

**QUALITY.**

Implied warranty of. See Sales, § 7.

**QUANTUM MERUIT.**

On substantial performance of building contract. See Work and Labor, § 1.

**QUARANTINE.**

National, state and municipal quarantine of diseased animals. See Animals, §§ 7, 8.  
Violation of regulations may be declared a crime. See Criminal Law, § 1.  
Power of board of health to make quarantine regulations. See Health, §§ 2, 3.

**QUIET.**

Nuisances affecting. See Nuisances, § 7.

**QUIET ENJOYMENT.**

Covenant of. See Covenants, § 4.

**QUIETING TITLE.**

Against unknown owners. See Absentees, § 2.

§ 1. Who may Sue to Remove Cloud on Title.

Cloud on title defined. 45: 373, 377, 378.

Cloud must have apparent validity. 45: 373.

Void judgments and tax certificates are not clouds. 45: 377.

Right is purely equitable. 45: 374.

Statutes enlarging equitable right. 45: 374.

Necessity for possession. 45: 375.

Possession must be bona fide. 45: 375.

Stranger to title in possession has no right. 45: 376.

Adverse possessor. 45: 376.

Cotenant out of possession. 45: 376.

Holder of perfect equitable title out of possession. 45: 376.

Mortgagor in possession. 45: 377.

Mortgagee out of possession. 45: 378.

§ 2. Against Whom Suit may be Brought.

Against unknown owners. 87: 366.

Against numerous persons holding under common source where

each claims a separate and distinct tract of the land. 126: 991-1002.

### § 3. Judgment.

As judgment in personam. 1: 265.  
Operation and effect. 1: 265.

## QUI TAM ACTIONS.

Nature of. See Penalties, § 1.

## QUITCLAIM DEEDS.

See Deeds, § 14.

As color of title. See Adverse Possession, § 10.

## QUOTIENT VERDICT.

Invalidity of. See Criminal Law, § 56.

## QUO WARRANTO.

To try title to office. See Officers, § 12.

### § 1. At Instance of Private Person.

When common-law rule prevails. 125: 634.

Principles underlying modern statutes. 125: 634.

Discretion of court. 125: 635; 52: 312, 313.

Suits involving public office. 125: 635-640.

Suits against public or municipal corporations. 125: 640.

Suits dissolving private corporations or seizing franchise. 125: 643.

Suits against officers of corporations. 125: 646.

Miscellaneous cases. 125: 647.

### § 2. Statute of Limitations.

Quo warranto as writ of right. 52: 312.

Discretion of court to issue on relation of private individual. 52: 312, 313.

Statute does not run against the state. 52: 313.

In proceeding to question existence or powers of municipal corporation. 52: 314.

In proceedings to enforce private rights. 52: 314, 315.

## RACE.

Protection from race discrimination. See Constitutional Law, § 21.

## RACING.

Right to use streets for. See Municipal Corporations, § 22.

## RAFFLES.

As gambling. See Gaming, § 4.

As lottery. See Lotteries, § 1.

## RAILROADS.

STATE CONTROL, § 1.

STATE REGULATION OF RATES, § 2.

AS ADDITIONAL SERVITUDE, § 3.

MORTGAGE OF AFTER-ACQUIRED PROPERTY AND PROPERTY PASSING THEREBY, § 4.

CLAIMS HAVING PRIORITY OVER RAILWAY MORTGAGES, § 5.

LIABILITY OF LESSOR RAILROAD TO PERSONS OTHER THAN LESSEE, § 6.

DUTY TO PERSONS ON OR NEAR TRACKS, § 7.

— PERSONS TRESPASSING ON TRACK, § 8.

DUTY TO ANIMALS ON OR NEAR TRACKS, § 9.

INJURIES DUE TO FRIGHTENING ANIMALS BY EMISSION OF STEAM ENGINE, § 10.

LIABILITY FOR INJURIES TO ADJOINING LANDS INCIDENT TO OPERATION OF ROAD, § 11.

LIABILITY FOR INJURIES OR LOSSES ARISING FROM OPERATION OF CARS OF OTHER COMPANIES, § 12.

LIABILITY OF ROAD IN HANDS OF TRUSTEE OR RECEIVER, § 13.

FIRES COMMUNICATED FROM ENGINE, § 14.

See, also, Carriers; Street Railroads.

Attachment of foreign railroad cars. See Attachment, § 2.

Condemnation of land for. See Eminent Domain, §§ 4, 8.

Judicial notice of. See Evidence, § 3.

Killing in negligent management of. See Homicide, § 11.

Duty to furnish improved appliances to servants. See Master and Servant, § 8.

Bosses and superintendents as vice-principals. See Master and Servant, § 19.

Specific performance of contracts to construct or operate. See Specific Performance, § 6.

Place of taxation of railroad property and rolling stock. See Taxation, § 13.

Telegraph and telephone lines along. See Telegraphs and Telephones.

### § 1. State Control.

Regulation by corporation commission of Oklahoma. 138: 1007-1010.

### § 2. State Regulation of Rates.

Evolution and diminution of doctrine announced in *Munn v. Illinois*. 62: 289-304.

### § 3. As Additional Servitude.

Elevated railroads. 106: 246.

Suburban railroads. 106: 248.

Ordinary railroads. 106: 253.  
 Distinction between carriage of express and freight. 106: 256.  
 Private railroads. 106: 257.  
 Switch-tracks and terminals. 106: 257.  
 Change from narrow to standard gauge. 106: 259.  
 Allowing use of tracks by another road. 106: 259.  
 Laying additional tracks. 106: 259.  
 Underground railroads. 106: 267.

#### § 4. Mortgage of After-acquired Property and Property Passing Thereby.

Validity in general. 99: 252.  
 Necessity for words of futurity. 99: 253.  
 Property subject to—Necessary or appurtenant to road. 99: 254.  
 — Land not used in connection with road. 99: 255.  
 — Terminal facilities and property beyond line. 99: 255.  
 — Buildings, elevators, stores, hotels, etc. 99: 255.  
 — Equipment and other personalty. 99: 256.  
 Right of way. 99: 256.  
 Road to be completed. 99: 256.  
 Acquired, extended and consolidated lines. 99: 257.  
 Branch lines and spur tracks. 99: 258.  
 Leases and leased roads. 99: 258.  
 Grants and bonds in aid of roads. 99: 259.  
 Rolling stock. 99: 259.  
 Earnings and income. 99: 260.

#### § 5. Claims Having Priority Over Railway Mortgages.

In general. 54: 400, 401.  
 Claims resulting from operation by receiver. 54: 402.  
 Claims of receivership. 54: 404.  
 Back claims. 54: 405.  
 Allowance of claims by consent. 54: 408.  
 Going concern, operating expenses, back claims. 54: 409.  
 Time debt was contracted. 54: 413.  
 Advances. 54: 413.  
 Assigned claims. 54: 414.  
 Attachment liens. 54: 414.  
 Attorney's fees. 54: 414.  
 Bonds. 54: 415.  
 Construction and improvements. 54: 415.  
 Interest. 54: 416.

Rolling stock, machinery, repairs and rental. 54: 416.  
 Wages of employee. 54: 418.  
 Second mortgages. 54: 420.  
 Supplies and materials. 54: 420, 422.  
 Judgment lien. 54: 421, 429.  
 Taxes. 54: 421.  
 Preservation of property. 54: 421.  
 Mechanics' and laborers' liens. 54: 422.  
 Damages for injuries. 54: 425.  
 Receivers' certificates. 54: 431.

#### § 6. Liability of Lessor Railroad to Persons Other Than Lessee.

Invalidity of lease. 58: 148.  
 Liability of same as if no lease had been made. 58: 148.  
 For injuries to passengers. 58: 148.  
 For refusal to receive and transport goods. 58: 148.  
 For loss or destruction of goods. 58: 148.  
 To servants of lessee for defects in roadbed. 58: 148.  
 Where lease is authorized by law or its validity is admitted. 58: 149.  
 — Liability to servants of lessee for defects in roadbed. 58: 149.  
 — Liability for omission of public duty. 58: 150.  
 — For negligence of lessee in operating trains, setting fires, building fences and repairing road. 58: 151-156.

#### § 7. Duty to Persons on or Near Tracks.

In general. 20: 452.  
 Persons who are not trespassers. 20: 453.  
 Trespassers. 20: 453.  
 Duty to persons approaching track. 20: 114.

#### § 8. — Persons Trespassing on Track.

Duty toward. 82: 158.  
 Nature of liability for injuring. 82: 158.  
 Trespassing children. 82: 158, 159.

#### § 9. Duty to Animals on or Near Tracks.

Duty to maintain fences and cattle-guards. 21: 289.  
 Duty to fence depot grounds. 21: 289.  
 Duty to cattle on track. 20: 161.  
 Validity of law requiring company to fence tracks and build cattle-

guards for the protection of animals at large. 62: 170.

**§ 10. Injuries Due to Frightening Animals by Emission of Steam from Engine.**

Origin of liability. 133: 863.

Circumstances creating liability. 133: 864.

— Maliciousness. 133: 864.

— Recklessness and wantonness. 133: 864.

Circumstances excluding liability. 133: 868.

— Statutory signals. 133: 869.

— Warning whistles—Acts of servants outside scope of employment. 133: 869.

Burden of proof. 133: 871.

Liability for injuries due to frightening animals by noisy crossing signals. 133: 869.

**§ 11. Liability for Injuries to Adjoining Lands Incident to Operation of Road.**

In general. 5: 537.

Interference with lateral support. 5: 537.

Injuries from blasting. 5: 538.

Obstructing flow of water. 5: 538.

Recovery in successive actions. 5: 539.

**§ 12. Liability for Injuries or Losses Arising from Operation of Cars of Other Companies.**

Right of private carrier to contract for exemption from liability. 130: 34.

Basis of nonliability. 130: 35.

Contracts to haul circus trains and the like. 130: 35.

Contracts to haul drawing-room and sleeping-cars. 130: 38.

Refrigerator or other special cars. 130: 44.

Cars furnished by shipper or hired at his request. 130: 46.

Transportation by connecting carrier of cars of initial carrier. 130: 47.

**§ 13. Liability of Road in Hands of Trustee or Receiver.**

In general. 5: 313.

Where absolute liability is imposed by statute. 5: 314.

Possession of receiver must be exclusive to relieve company. 5: 314.

Effect of appointment of receiver on pending actions. 5: 315.

Liability of receiver as such. 5: 315.

Necessity for leave to sue receiver. 5: 316.

**§ 14. Fires Communicated from Engine.**

Validity of law imposing duty to equip locomotive engines with spark-arresters and making communication of fire prima facie evidence of negligence. 62: 171.

**RAILROAD TICKETS.**

See Carriers, §§ 34-37.

**RAISED CHECK.**

Rights and remedies on payment of. See Banks and Banking, § 10.

**RANGING CATTLE.**

Over uninclosed lands. See Animals, § 5.

**RAPE.**

Resulting in death of victim as homicide. See Homicide, § 10.

**RATES.**

Regulation of railroad rates. See Railroads, § 2.

**RATIFICATION.**

Of alteration of written instrument. See Alteration of Instruments, § 1.

Contracts which cannot be ratified. See Contracts, § 14.

Of infant's contracts. See Infants, § 3.

Of acts of agents. See Principal and Agent, § 8.

**RATS.**

Liability of warehousemen for loss from depredations of. See Warehousemen, § 6.

**REAL ESTATE AGENTS.**

Commissions on sales. See Brokers, §§ 2, 3.

**REAL PROPERTY.**

See Property.

Contracts to purchase and convey. See Vendor and Purchaser, §§ 1-13.

**REASONABLE DOUBT.**

Instructions on. See Criminal Law, § 52.

**REASONABLENESS.**

Of contract limiting carrier's liability. See Carriers, § 26.

Of license tax. See Licenses, § 3.

## REASONABLE RESTRAINT OF TRADE.

Contracts and combinations which are more than reasonable restraints on trade in necessities of life. See Monopolies, § 1.

## REBELLION.

See Riot.

Suspension of habeas corpus during. See Habeas Corpus, § 1.

## REBUTTAL.

Of impeaching evidence. See Witnesses, § 14.

## RECEIPT.

As evidence of accord. See Accord and Satisfaction, § 1.

## RECEIVERS.

WHEN PROPER TO APPOINT, § 1.

POWERS, § 2.

POWER TO CREATE LIENS ON PROPERTY IN CUSTODY, § 3.

EXISTING LIENS AND THEIR ENFORCEMENT, § 4.

LIABILITY FOR TORT, § 5. — — — —

CERTIFICATES, § 6.

ACTIONS AGAINST RECEIVER OR PERSONS UNDER RECEIVERSHIP WITHOUT LEAVE OF COURT, § 7.

EFFECT OF JUDGMENT AGAINST, § 8.

Authority to accept something other than what might be legally demanded in satisfaction of debt due estate. See Accord and Satisfaction, § 6.

Right to prosecute appeal. See Appeal and Error, § 2.

Setoff of demands against bank in hands of receiver. See Banks and Banking, § 21.

Of corporations. See Corporations, § 59.

Persons concluded by judgments against. See Judgment, § 39.

Appointment of receiver to preserve rents of mortgaged lands. See Mortgages, § 13.

Liability of railroad in hands. See Railroads, § 13.

Setoff by. See Setoff and Counterclaim, § 2.

### § 1. When Proper to Appoint.

Grounds for appointment generally. 72: 29.

Discretion of court. 72: 33.

Notice. 72: 35.

Time for appointment. 72: 38.

Nature of property. 72: 40.

Statutory provisions. 72: 43.

Assignment for benefit creditors. 72: 43.

Attached property. 72: 45.

Banks. 72: 45.

Bankruptcy. 72: 47.

Benefit societies. 72: 47.

Building and loan societies. 72: 47.

Conflict of laws. 72: 48.

Corporations. 72: 48.

Cotenants and joint owners. 72: 60.

Creditors' suits. 72: 60.

Decedent's property. 72: 63.

Disputed title. 72: 66.

Divorce and maintenance. 72: 67.

Ejectment. 72: 68.

Foreign corporations. 72: 69.

Fraud. 72: 70.

Staying commission of crime. 72: 70.

Infants and lunatics. 72: 71.

Injunction and receiver. 72: 72.

Insolvency. 72: 72.

Insurance. 72: 73.

Judicial sales. 72: 73.

Lien or special right. 72: 73.

Mines. 72: 73.

Mortgaged property. 72: 74.

Partnership. 72: 80.

Quo warranto. 72: 86.

Railroad property. 72: 86.

Rents and profits. 72: 92.

Satisfaction of judgment. 72: 93.

Specific performance. 72: 93.

Supplementary proceedings. 72: 94.

Taxes. 72: 95.

Telegraph companies. 72: 95.

Trust property. 72: 95.

Vendor and purchaser. 72: 96.

Water companies. 72: 96.

### § 2. Powers.

Territorial extent of powers. 8: 49-54.

### § 3. Power to Create Liens on Property in Custody.

In general. 84: 72.

For debts created prior to receivership. 83: 73.

For debts created during receivership. 83: 75.

Receivers of private corporation. 83: 77.

### § 4. Existing Liens and Their Enforcement.

Nature of receiver's possession. 71: 352.

Effect of appointment of receiver. 71: 353.

Recovery of assets. 71: 354.

Suits against receivers in general. 71: 355.

Conflict of jurisdiction. 71: 356.

Remedies of creditors. 71: 357.

Existing liens—In general. 71: 361.

— Priority between. 71: 363.

Creditors' suits. 71: 367.

Lien on husband's property in divorce suit. 71: 368.  
 Equitable liens. 71: 368.  
 Execution cannot be levied on property in receivership. 71: 370.  
 Garnishment—Leave of court before. 71: 372.  
 — Enjoining. 71: 373.  
 Judgment lien. 71: 373.  
 Mechanics' liens. 71: 375.  
 Liens against partnership property. 71: 376.  
 Liens against railroads. 71: 377.  
 Priority of receivers' certificates. 71: 379.  
 Effect of receiver's sale on liens. 71: 381.  
 — Lien for rent. 71: 381.  
 Statutory liens. 71: 381.  
 Tax liens. 71: 383.  
 Vendor's lien. 71: 384.  
 Right of creditor to share in distribution of assets. 71: 384.

**§ 5. Liability for Tort.**

To persons interested in estate. 120: 278.  
 To persons not interested in estate. 120: 279.  
 Acts of agents and servants. 120: 280.  
 Manner of enforcement of liability. 120: 281.

**§ 6. Certificates.**

Power of court to issue. 128: 103.  
 Purposes for which certificates may issue. 128: 103.  
 — Operating expenses. 128: 104.  
 — Rent, taxes and interest. 128: 104.  
 — Repairs, improvements and reconstruction. 128: 105.  
 — In case of strictly private corporations. 128: 107.  
 Proceedings preliminary to issue—Application for order. 128: 110.  
 — Notice, issue and hearing. 128: 111.  
 Validity of certificates—Compliance with order of court. 128: 112.  
 — Consideration. 128: 113.  
 — Proceeds coming into hands of receiver. 128: 113.  
 — Estoppel to deny validity. 128: 113.  
 Lien and priority thereof. 128: 114.  
 Transfer of certificates and rights of holders. 128: 115.  
 — Negotiability. 128: 116.

Index-Digest—20

**§ 7. Actions Against Receiver or Persons Under Receivership Without Leave of Court.**

General principles as to suing or interfering with receivers. 74: 285.  
 Leave to sue—Jurisdictional. 74: 287.  
 Trespass or conversion. 74: 289.  
 Deprivation of trial by jury. 74: 290.  
 Suing persons under receivership. 74: 291.  
 Acts of Congress—Judgment against receiver. 74: 292.  
 Railroad receivers. 74: 299.

**§ 8. Effect of Judgment Against.**

On parties represented. 94: 54.  
 In courts other than those appointing receiver. 95: 55.  
 Personal liability of receiver. 95: 56.  
 Enforcement of judgment. 95: 56.

**RECEIVERS' CERTIFICATES.**

See Receivers, § 3.

**RECEIVING STOLEN GOODS.**

Title acquired by purchaser of stolen goods. See Sales, § 6.

**RECIPROCAL WILL.**

What constitutes and essentials. See Wills, § 7.

**RECITALS.**

In certificate of acknowledgment. See Acknowledgment, § 4.

**RECONSIDERATION.**

Of allowance of claim against county. See Counties, § 5.

**RECONVENTION.**

Of damages for wrongful attachment. See Attachment, § 7.

**RECORDING.**

See Records.

Of chattel mortgage. See Chattel Mortgages, § 4.  
 As delivery of deed. See Deeds, § 8.  
 Record of foreign will. See Wills, § 24.

**RECORDS.**

Right of abstractors of titles to examine and copy public records. See Abstracts of Title, § 2.  
 Necessity for record of instrument claimed as color of title. See Adverse Possession, § 9.  
 Requisites and validity of acknowledgment of instruments to be recorded. See Acknowledgment.

As evidence. See Evidence, § 17.  
 Recording unstamped writings. See Internal Revenue, § 1.  
 Of meetings of city council. See Municipal Corporations, § 7.  
 Liability of register of deeds for misfeasance or nonperformance of duty. See Registers of Deeds, § 1.

### § 1. Right to Examine and Copy.

Citizen's right. 124: 911.  
 Abstracter's right. 124: 912.

### § 2. Index.

As part of record. 96: 404.  
 Mistakes in index sufficient to put on inquiry. 96: 405.  
 Index and record-book to be taken together. 96: 405.  
 What constitutes suitable index: 96: 406.

### § 3. Effect of Defective Recording on Rights of Third Persons.

Defective record of no avail. 96: 398.  
 Defective record imparts notice. 96: 39.  
 Omission to copy seal not fatal. 96: 400.  
 Transcribing instruments in wrong book. 96: 400.  
 Slight and immaterial defects. 96: 402.  
 Defective record sufficient to put searcher on inquiry. 96: 402.  
 Indorsements on instruments at time of receipt by recorder. 96: 403.  
 Index—As part of record. 96: 404.  
 — Mistakes sufficient to put searcher on inquiry. 96: 405.  
 — Index and record-book to be taken together. 96: 405.  
 — What constitutes a suitable index. 96: 406.

### RECOURSE.

Indorsement without recourse. See Bills and Notes, §§ 13, 14.

### RECRIMINATION.

As defense in divorce suit. See Divorce, § 7.

### REDELIVERY.

Of deed. See Deeds, § 9.

### REDEMPTION.

Constitutionality of redemption laws affecting obligation of contract. See Constitutional Law, §§ 15, 16.

From execution sale. See Execution, §§ 12, 13.  
 From mortgage foreclosure. See Mortgages, § 22.  
 Waiver or release of equity of redemption. See Mortgages, § 23.

### RE-ENTRY.

Effect of re-entry clause on lease. See Landlord and Tenant, § 12.

### REFERENCE.

Power of referees to punish contempt. See Contempts, § 4.  
 Incorporating document in will by reference. See Wills, § 4.

### REFORMATION OF INSTRUMENTS.

INSTRUMENTS SUBJECT TO REFORMATION, § 1.

SAME, § 2.

— SHERIFF'S DEEDS, § 3.

— GROUNDS FOR REFORMATION, § 4.

— MISTAKES CONSTITUTING, § 5.

JURISDICTION, PROCEEDINGS AND RELIEF, § 6.

### § 1. Instruments Subject to Reformation.

Assignments. 65: 504.  
 Bills of sale or bond. 65: 505.  
 Certificates of acknowledgment. 65: 505.  
 Contracts. 65: 505.  
 Deeds. 65: 507.  
 Gift deeds, sheriff's deeds and tax deeds. 65: 514.  
 Policies of insurance. 65: 514.  
 Mortgages. 65: 617.  
 Promissory notes. 65: 519.  
 Leases, releases and sealed instruments. 65: 520.  
 Suretyship and guaranty. 65: 521.  
 Voluntary conveyances. 65: 521.  
 Wills. 65: 521.

### § 2. Same.

Deed or mortgage of homestead. 77: 804-806.

### § 3. — Sheriff's Deeds.

Power to reform. 109: 34.  
 Mistake in description. 109: 34.  
 Defective or void deed. 109: 36.  
 Mortgage foreclosure deed. 103: 36.

### § 4. Grounds for Reformation.

Mistake. 65: 484.  
 Fraud. 65: 497.  
 Negligence of complaint in executing as bar. 65: 500.



Effect of statute of frauds on right. 65: 501.

**§ 5. — Mistakes Constituting.**

General rule. 117: 228.

Mutuality. 117: 230.

Contracts reformable. 117: 232.

Mistake in inducement for contract. 117: 233.

Computation of subject matter or consideration. 117: 236.

Date, term of expiration of contract. 117: 237.

Name of parties or others. 117: 238.

Kind or character of consideration. 117: 238.

Kind of instrument necessary to carry out object of parties. 117: 239.

Legal effect of words used. 117: 238.

Capacity in which party signs. 117: 239.

Nature and character of estate conveyed. 117: 240.

Identity or description of property. 117: 241-244.

— Omitting land intended to be included. 117: 244.

— Including land not intended. 117: 244.

Omission or inclusion of easement, exception, reservation or condition and omission of seal. 117: 244.

**§ 6. Jurisdiction, Proceedings and Relief.**

Jurisdiction. 65: 481.

Evidence. 65: 491.

Pleading. 65: 496.

Judgment. 65: 502.

Persons against whom reformation is granted. 65: 502.

Laches as bar. 65: 504.

**REFORMATORIES.**

**§ 1. Constitutionality of Statutes.**

Commitment without jury trial. 120: 953.

Cruel and unusual punishment. 120: 957.

Arbitrary deprivation of custody. 120: 958.

Constitutional limitations. 120: 961.

Concerning juvenile courts. 120: 961.

**REFRIGERATOR-CARS.**

Liability of railroads hauling. See Railroads, § 12.

**REFRIGERATORS.**

Cold storage. See Warehousemen, § 3.

**REGISTERS OF DEEDS.**

**§ 1. Liability to Individuals for Misfeasance or Nonperformance of Official Duty.**

Failure to record instruments. 95: 85.

Failure to keep index. 95: 86.

Searching titles. 95: 87.

Who may sue. 95: 87.

Damages recoverable. 95: 88.

**REGISTRATION.**

Of voters. See Elections, § 3.

**REGULATION.**

See, also, Police Power.

Of business of banking. See Banks and Banking, § 2.

Of freight rates. See Carriers, § 2.

Of sale and use of passenger tickets. See Carriers, § 37.

Of cemeteries. See Cemeteries, § 1.

Regulations in exercise of police power. See Constitutional Law, §§ 4-11.

Of corporations by commissioners. See Corporations, § 7.

Of interstate extradition. See Extradition, § 1.

Of osteopathy and Christian science. See Physicians and Surgeons, § 4.

Of railroad rates. See Railroads, § 2.

Of street railroads. See Street Railroads, § 1.

Of playhouses. See Theaters and Shows, § 1.

Of warehousemen. See Warehousemen, § 2.

**REINSURANCE.**

See Insurance, § 46.

**REJECTION.**

Of claim against city. See Municipal Corporations, § 38.

**RELATION BACK.**

Of title of appropriator of water. See Waters and Watercourses, § 1.

**RELATIONSHIP.**

See Descent; Incest.

Kinds of. See Descent, § 3.

Disqualifying judge. See Judges, § 1.

**RELATIVES.**

See Descent; Incest.

Who are. See Incest, § 1.

Disqualified to serve as jurors. See Jury, § 3.

Presumption that services of relative are gratuitous. See Master and Servant, § 3.

**RELEASE.**

**CONSIDERATION—CLAIM FOR PERSONAL INJURIES, § 1.**  
**OF ONE JOINT OR JOINT AND SEVERAL OBLIGOR, § 2.**  
**RELEASE OF ONE JOINT WRONGDOER AS RELEASE OF ALL, § 3.**  
**RELEASE OF ONE JOINT WRONGDOER WITHOUT RELEASING OTHERS, § 4.**  
**VALIDITY OF CONTRACT RELEASING MASTER FROM LIABILITY FOR INJURIES TO SERVANT, § 5.**  
**COVENANT NOT TO SUE, § 6.**

**Legal rights which may be abandoned. See Abandonment, § 1.**

**Discharge of debt or obligation for injury by offer and acceptance of something different from what might have been legally claimed. See Accord and Satisfaction.**

**Distinguished from accord and satisfaction. See Accord and Satisfaction, § 2.**

**Of mutual obligations as consideration for accord. See Accord and Satisfaction, § 3.**

**Implied authority of attorney to waive or release rights of client. See Attorney and Client, § 8.**

**Power of guardian to execute. See Guardian and Ward, § 6.**

**Of sureties. See Principal and Surety, § 9.**

**Reformation of written releases. See Reformation of Instruments, § 1.**

**§ 1. Consideration—Claim for Personal Injuries.**

**Adequacy of consideration. 107: 615.**

**Promise of re-employment. 107: 616.**

**Re-employment for fixed term. 107: 618.**

**§ 2. Of One Joint or Joint and Several Obligor.**

**General rule that release discharges all. 138: 834.**

**Essential elements of release. 138: 836.**

**Effect of releasee of one with consent of all. 138: 836.**

**Subject matter and instrument of release. 138: 836.**

**Receipt as release. 138: 836.**

**Intent of parties governs construction. 138: 837.**

**Reservation of rights against those not released as manifesting intention. 138: 839.**

**Seals and their effect on the release. 138: 839.**

**Statutory modification of common-law rule. 138: 840.**

**§ 3. Release of One Joint Wrongdoer as Release of All.**

**The general rule. 92: 873.**

**Complete satisfaction. 92: 874.**

**Partial satisfaction—General effect. 92: 874.**

**— Unliquidated claims. 92: 875.**

**— Agreements not to sue. 92: 876.**

**— Parol evidence to explain. 92: 877.**

**Release under seal—General effect. 92: 877.**

**— Evasion of. 92: 878.**

**Discharges in particular cases. 92: 878.**

**Parties to the discharge—Infants. 92: 880.**

**— Strangers. 92: 881.**

**Reservation of right to hold others. 92: 882.**

**Covenant not to sue one does not release others. 92: 882.**

**Pendency and dismissal of suit against one. 92: 883.**

**Recovery of judgment against one wrongdoer. 92: 885.**

**— Partial satisfaction of judgment. 92: 885.**

**— Costs and nominal damages against others. 92: 886.**

**— Effect of unsatisfied judgment. 92: 886.**

**— Effect of issuing execution. 92: 887.**

**Effect of release to, a satisfaction accepted from, one of several wrongdoers. 11: 906-909.**

**§ 4. Release of One Joint Wrongdoer Without Releasing Others.**

**Technical release, covenant not to sue. 111: 282.**

**Reservation of right to hold others. 111: 282.**

**Satisfaction or compensation in full. 111: 284.**

**Satisfaction or compensation in part. 111: 285.**

**§ 5. Validity of Contract Releasing Master from Liability for Injuries to Servant.**

**Contract relieving master from liability for future negligence is against public policy. 3: 255.**

**Waiving statute making master liable for negligence of fellow-servant. 3: 235.**

**Contract assuming risk does not include injuries resulting from negligence. 3: 235, 236.**

Contract of railroad employees exempting company from liability. 3: 236, 237.

### § 6. Covenant not to Sue.

As release. 36: 145.

Bars right of action. 36: 145, 146.

Promise not to sue for certain time. 36: 146.

Promise not to sue joint obligor. 36: 149.

## RELIGIOUS AFFILIATIONS.

Disqualifying jurors. See Jury, § 3.

## RELIGIOUS SOCIETIES.

Equity jurisdiction over. See Association, § 4.  
Right to use schoolhouse for religious meetings. See Schools and School Districts, § 4.

### § 1. Liability for Debts.

Incorporated societies. 109: 372.

Unincorporated societies. 109: 374.

Parishes. 109: 375, 376.

### § 2. Jurisdiction of Courts Over Church Controversies.

Matters of doctrine or discipline. 100: 734.

Expulsion of members. 100: 737.

Dismissal or expulsion of pastor. 100: 740.

When property or civil rights are involved. 100: 743.

## RELIGIOUS TEACHING.

In public schools. See Schools and School Districts, § 4.

## RELIGIOUS TRAINING.

As test of competency of child witness. See Witnesses, § 4.

## RELINQUISHMENT.

Of property or legal right. See Abandonment, § 3; Release.

## RELOCATION.

Of highway acquired by prescription. See Highways, § 3.

## REMAINDERS.

Partition of. See Partition, § 5.

### § 1. Duties of Tenant in Possession.

Duties of tenant for life to remainderman. 137: 651-664.

### § 2. Contingent.

How barred, defeated or conveyed. 17: 839-843.

### § 3. Rights and Remedies of Remaindermen and Reversioners.

Where the subject matter is personal property. 14: 628.

Trespass, trover and ejectment are not available. 14: 629.

Injury to the inheritance. 14: 629.

Joint action with tenant. 14: 630.

Erection and maintenance of permanent nuisance. 14: 630.

Encroachments upon land giving right of action. 14: 631.

— Waste. 14: 632.

Contribution from tenant for payment of interest. 14: 634.

Life tenant cannot hold adversely. 14: 635-637.

Compelling payment of taxes or discharge of encumbrances. 14: 638.

## REMAND.

Mandamus to compel remand of cause from federal to state court. See Mandamus, § 6.

## REMARKS OF COUNSEL.

Constituting ground for new trial. See New Trial, § 1.

Prejudicial to fair civil trial. See Trial, § 4.

## REMEDY AT LAW.

As bar to cancellation of instrument in equity. See Cancellation of Instruments, § 7.

As bar to mandamus. See Mandamus, § 1.

## REMOTE CAUSE.

Of negligent injury. See Negligence, § 10.

## REMOVAL.

Of dead bodies. See Dead Bodies, § 1.

Of executor or administrator. See Executors and Administrators, §§ 3, 4.

Of public officer. See Officers, § 9.

## RENEWAL.

Of judgment. See Judgment, § 50.

Of lease. See Landlord and Tenant, §§ 11, 24.

## RENTS.

Exemption of rents of homestead. See Homestead, § 2.

Liability of mortgagee in possession for rents and profits. See Mortgages, § 12.

Right of mortgagee to rents. See Mortgages, § 13.

Liability of cotenant for. See Tenancy in Common, § 6.

**REOPENING SALE.**

Auction sale. See Auctions and Auctioneers, § 6.

**REORGANIZATION.**

Of corporations distinguished from consolidation. See Corporations, § 60.

**REPAIRS.**

By life tenant. See Life Estates, § 3.

Duty of master to keep premises in good repair. See Master and Servant, § 9.

Repair of private roads. See Private Roads, § 1.

Duty of street railroad to keep track in repair. See Street Railroads, § 2.

**REPEAL.**

Of statutes by implication. See Statutes, § 8.

**REPEATED RECOVERIES.**

For same nuisance. See Nuisance, § 5.

**REPEATED TRESPASSES.**

Enjoining. See Injunction, § 4.

**REPLEVIN.**

Of property belonging to public office. See Officers, § 12.

**§ 1. General Note.**

Nature of remedy. 80: 741.

Possession of defendant. 80: 744.

Possessory right of plaintiff. 80: 744.

Parties plaintiff. 80: 746.

Parties defendant. 80: 751.

Trial of title to property. 80: 752.

Wrongful taking and unlawful detention. 80: 752.

Demand and refusal. 80: 753.

Pleading, proof and practice. 80: 766.

**§ 2. Property Subject to.**

Personal property generally. 80: 756.

Title deeds. 80: 756.

Replevined property. 80: 756.

Hides of animals wrongfully taken. 80: 757.

Money not subject to replevin. 80: 757.

Negotiable instruments. 80: 757.

Buildings not attached to soil. 80: 758.

Fixtures. 80: 758.

Trees converted into poles or lumber. 80: 759.

Property in custody of officers of law. 80: 759-763.

**§ 3. Against Officers.**

By a stranger to the writ. 25: 256.

By co-owner. 25: 258.

By receiver. 25: 259.

Venue of action. 25: 259.

**REPUBLICATION.**

Of revoked will. See Wills, § 21.

**REPUDIATION.**

See Disaffirmance; Revocation.

**REPUGNANT CLAUSES.**

In contracts. See Contracts, § 3.

In deeds. See Deeds, § 7.

**REPUTATION.**

Evidence of reputation in homicide cases. See Homicide, §§ 15-17.

Marriage by. See Marriage, § 3.

**RES ADJUDICATA.**

In criminal cases. See Criminal Law, § 63.

What judgments are res adjudicata. See Judgment, §§ 31-33.

**RESALE.**

On default of bidder at auction sale. See Auctions and Auctioneers, § 6.

**RESCISSION.**

See Revocation.

Of agreement to arbitrate. See Arbitration and Award, § 2.

Of contract to marry. See Breach of Marriage Promise, § 1.

Of contract. See Contracts, § 25.

Of acts of agents. See Principal and Agent, § 8.

Of sale. See Sale, § 11.

Of deed of trust. See Trusts, § 8.

Of option to purchase land. See Vendor and Purchaser, § 3.

Of will. See Wills, §§ 18-21.

**RESERVATIONS.**

In assignments for creditors. See Assignments for Benefit of Creditors, § 1.

Discovery of mineral in national forests. See Mines and Minerals, § 3.

**RES GESTAE.**

Dying declarations as part of. See Homicide, § 22.

**RESIDENCE.**

What constitutes. See Domicile.

**RESIDUARY BEQUESTS.**

Actual, virtual and quasi. See Wills, § 45.

**RESIGNATION.**

Of corporate officers. See Corporations, § 39.  
Of public officer. See Officers, § 7.

**RES IPSA LOQUITUR.**

Doctrine of negligence presumed from happening of accident. See Negligence, §§ 20, 21.

**RESISTING ARREST.**

Right to resist arrest. See Arrest, § 1.

**RESPONDEAT SUPERIOR.**

Inapplicable to negligence of independent contractor. See Master and Servant, § 34.

**RESPONSIBLE BIDDERS.**

Who are. See Municipal Corporations, § 15.

**RESTAURANT-KEEPERS.**

See Innkeepers.

**RESTITUTION.**

Execution of writ of. See Ejectment, § 4.  
On vacation of judgment. See Judgment, § 19.

**RESTITUTION ON REVERSAL.**

Of persons dispossessed under judgment. See Appeal and Error, § 7.  
Where property has been transferred. See Appeal and Error, § 8.  
Proceedings for. See Appeal and Error, § 9.

**RESTRAINING ALIENATION.**

Of corporate stock. See Corporations, § 21.  
Rule against perpetuities. See Perpetuities, § 1.

**RESTRAINT OF MARRIAGE.**

Conditions in wills in restraint of marriage. See Wills, § 43.

**RESTRAINT OF TRADE.**

See Monopolies.

**RESTRICTIONS.**

In deeds. See Deeds, §§ 17-22.  
In wills. See Wills, § 40.

**RESULTING TRUSTS.**

Where one pays for conveyance to another. See Trusts, §§ 1, 7.

**RESURVEY.**

Purpose and effect of. See Boundaries, § 9.

**RETENTION OF POSSESSION.**

By chattel mortgagees. See Chattel Mortgages, § 5.

**RETREAT BEFORE VIOLENCE.**

Duty to retreat before killing in self-defense. See Homicide, § 6.

**RETROSPECTIVE LAWS.**

Retrospective operation of statute of limitations. See Limitation of Actions, § 6.  
Validity of. See Statutes, § 2.

**RETURN.**

To writ of attachment. See Attachment, § 1.  
Irregularities in election returns. See Elections, § 3.  
To writs as evidence. See Evidence, § 21.  
Of summons. See Process, § 2.

**RETURN OF GOODS.**

Return of converted goods as defense. See Trover and Conversion, § 1.

**REVENUE STAMP.**

On chattel mortgage. See Chattel Mortgages, § 2.  
Effect of failure to affix. See Internal Revenue, § 1.

**REVERSAL OF JUDGMENT.**

Grounds. See Appeal and Error, § 5.  
Effect. See Appeal and Error, § 6.  
Restitution on reversal. See Appeal and Error, § 7.  
— Where property has been transferred. See Appeal and Error, § 8.  
— Proceedings for. See Appeal and Error, § 9.

**REVERSIONS.**

Partition of. See Partition, § 5.

**§ 1. Duties of Tenant in Possession.**

Duties of life tenant to reversioner. 137: 651-664.

**REVIEW.**

See Appeal and Error; Certiorari; Habeas Corpus.

Errors reviewable by writs of error coram nobis and vobis. See Judgment, § 13.  
Relief against judgment other than by bill of review. See Judgment, § 24.  
Effect on lis pendens. See Lis Pendens, § 1.

**REVISIONS.**

Constitutionality of code revisions. See Statutes, § 3.

**REVIVAL.**

Of civil actions on death of party to suit. See Abatement and Revival, § 4.  
Of forfeited insurance. See Insurance, § 28.  
Of satisfied judgment on failure of title to property sold under it. See Judgment, § 51.  
Of dormant judgment. See Judgment, § 52.

Of mortgage satisfied by mistake. See Mortgages, § 24.  
 Of waived vendor's lien. See Vendor and Purchaser, § 9.  
 Of revoked will. See Wills, § 18.

### REVOCATION.

Of agreement to arbitrate. See Arbitration and Award, § 2.  
 Of escrow. See Escrows, § 8.  
 Of letters of administration on removal from state. See Executors and Administrators, § 1.  
 Of gift causa mortis. See Gifts, § 3.  
 Of married woman's power of attorney. See Husband and Wife, § 12.  
 Of infant's contracts. See Infants, § 4.  
 Of parol license to use land. See Licenses, § 6.  
 Of authority of partner. See Partnership, § 11.  
 Of acts of agent. See Principal and Agent, § 8.  
 Of power of attorney. See Principal and Agent, § 11.  
 Of deed of trust. See Trusts, § 8.  
 Of option to purchase land. See Vendor and Purchaser, § 3.  
 Of joint, mutual or reciprocal will. See Wills, § 7.  
 Of will. See Wills, §§ 18-21.

### REWARDS.

Right of finder of lost goods to reward. See Finding Lost Goods, § 3.  
 Right of member of posse comitatus to claim reward. See Sheriffs and Constables, § 7.

### RIGHT OF WAY.

As appurtenance. See Deeds, § 16.  
 Of street railroads over streets. See Street Railroads, § 2.

### RIOT.

Liability of carrier for injury to passenger from mob violence. See Carriers, § 45.  
 Liability of carrier for delay caused by. See Carriers, § 13.  
 Liability of fire insurer for loss caused by. See Insurance, § 32.  
 Labor strikes. See Trade Unions, § 1.

### § 1. Martial Law Other Than in Time of War.

Nature and effect. 98: 772.  
 Difference between military and martial law. 98: 773.  
 Effect upon civil law. 98: 773.  
 Liability for willful or oppressive acts. 98: 775.  
 Suspension of writ of habeas corpus. 98: 776.

### RIPARIAN RIGHTS.

On navigable waters. See Navigable Waters, § 3.  
 On non-navigable waters. See Waters and Watercourses, § 5.

### RISKS.

Covered by fire policy. See Insurance, § 32.

### RIVER BANKS.

Apportionment of accretions to banks of non-navigable waters. See Waters and Watercourses, § 6.

### RIVERS.

Navigable. See Navigable Waters.  
 Non-navigable. See Waters and Watercourses.  
 Accelerating, diminishing or impeding flow of non-navigable rivers. See Waters and Watercourses, § 11.

### ROAD WORK.

Right to compel. See Highways, § 2.

### ROADS.

See Highways; Private Roads; Streets.

### ROBBERY.

See Burglary; Larceny.

Distinguished from extortion. See Extortion, § 1.  
 Killing in perpetrating. See Homicide, § 10.

### § 1. In General.

Effect of return of stolen goods. 135: 497.

### § 2. Definitions.

Scriptural. 135: 474.  
 Common law. 135: 475.  
 Statutory. 135: 475.

### § 3. Constituent Parts of the Crime.

Taking. 135: 476.  
 Asportation or carrying away. 135: 476.  
 Intent. 135: 477.  
 Property and persons subject to. 135: 479.  
 Taking under supposed legal authority. 135: 481.  
 Snatching. 135: 481.  
 Taking under claim of right. 135: 485.  
 Taking against will of possessor. 135: 489.  
 Taking in presence of victim. 135: 489.  
 Force and violence. 135: 493.

### ROENTGEN RAYS.

X-ray photographs as evidence. See Evidence, § 23.

### ROOTS.

Penetrating adjoining lands. See Adjoining Land Owners, § 2.

## ROWBOATS.

Duty of large vessels to avoid imperiling by swells. See Collision, § 2.

## RULES.

Governing expulsion of members of associations. See Associations, § 2.

Of savings banks. See Banks and Banking, § 26.

Of carrier regulating baggage. See Carriers, § 57.

Of courts. See Court, § 7.

Of evidence. See Evidence, § 4.

School rules. See Schools and School Districts, § 1.

## RUNNING AT LARGE.

Law governing animals at large. See Animals, § 5.

## RUNNING WITH THE LAND.

Covenants running with the land. See Covenants, § 2.

## SABBATH DAY.

See Sunday.

## SAFE.

Exemption of safe from execution. See Exemptions, § 7.

## SAFE DEPOSIT COMPANIES.

Duty in care of property. See Depositaries, § 1.

## SAFE DEPOSIT VAULTS.

Care required of banks keeping. See Banks and Banking, § 16.

## SAFE PREMISES.

Duty to maintain. See Negligence, § 5.

## SAFE TOOLS AND PLACES.

Duty of master to furnish. See Master and Servant, § 8.

## SAFETY DEPOSIT.

Duties of depositaries. See Warehousemen, § 5.

## SAILORS.

Duty of owners of vessels toward. See Seamen, § 1.

Oral wills of. See Wills, § 10.

## SAIL VESSELS.

Duty to keep course. See Collision, § 1.

## SALES.

DEFINED AND DISTINGUISHED FROM OTHER TRANSACTIONS, § 1.  
VALIDITY, § 2.

— SALES OF PROPERTY NOT IN EXISTENCE, § 3.

OF SECRETS, § 4.

TITLE ACQUIRED BY PURCHASE FROM ONE WITHOUT TITLE, § 5.

— SAME, § 6.

IMPLIED WARRANTY OF QUALITY, § 7.

LIEN OF SELLER, § 8.

PASSING OF TITLE, § 9.

— WHEN TITLE DOES NOT PASS THOUGH SALE IS NOT EXPRESSLY CONDITIONAL, § 10.

RESCISSION, § 11.

— COUNTERMAND OF EXECUTORY CONTRACT, § 12.

RISK OF LOSS, § 13.

WHO BEARS LOSS BEFORE PRICE IS PAID, § 14.

WHO MUST BEAR LOSS OF GOODS IN TRANSIT, § 15.

RIGHTS AND REMEDIES OF PARTIES. § 16.

STOPPAGE IN TRANSITU, § 17.

CONDITIONAL SALE, § 18.

— WHAT CONSTITUTES, § 19.

— DISTINGUISHED FROM OTHER TRANSACTIONS, § 20.

— WHEN PURCHASER MAY TRANSFER PERFECT TITLE, § 21.

— RIGHTS AND REMEDIES OF SELLER ON BREACH, § 22.

See, also, Assignments; Deeds; Exchange of Property; Fraudulent Conveyances; Vendor and Purchaser.

Sale of impounded animals. See Animals, § 6.

Effect of sale as establishing abandonment. See Abandonment, § 3.

Auction sales. See Auctions and Auctioneers, §§ 4, 6.

Distinguished from bailment. See Bailment, § 1.

Police power of state to regulate sales of goods. See Constitutional Law, § 7.

Of shares of stock. See Corporations, §§ 20-23.

Of pledged corporate stock. See Corporations, § 26.

Liability of seller of injurious drugs. See Druggists, § 1.

Distinguished from exchange of property. See Exchange of Property, § 1.

Execution sales. See Execution, §§ 6-13.

Of public franchise. See Franchisees, § 2.

Acceptance of goods sufficient to take sale out of operation of statute of frauds. See Frauds, Statute of, § 6.

Part payment of purchase price taking sale out of operation of statute of frauds. See Frauds, Statute of, § 7.

Of futures. See Gaming, § 2.

By guardians. See Guardian and Ward, § 13.

Illegal sale of liquor. See Intoxicating Liquors, § 3.

Manufacturer's liability to third persons for negligence. See Negligence, § 9.

Of trade secret or secret process. See Patents, § 1.

Reformation of bills of sale. See Reformation of Instruments, § 1.

By trustees. See Trusts, § 13.

Usurious. See Usury, § 1.

Of real property. See Vendor and Purchaser, §§ 1-13.

Under power in will. See Wills, § 44.

### § 1. Defined and Distinguished from Other Transactions.

Defined. 94: 209.

Distinguished from conditional sale. 94: 210.

Distinguished from bailment. 94: 215; 2: 711-713.

— Sale of cereals in warehouse. 94: 220.

— Custom and usage. 94: 225.

— Bailment with privilege of purchase. 84: 226.

Distinguished from exchange. 94: 227.

Distinguished from assignment. 94: 229.

Distinguished from assignment for creditors. 94: 230.

Distinguished from contract for work, labor and materials. 94: 231.

### § 2. Validity.

Sales having in view the subsequent violation of foreign or domestic law. 32: 450-455.

Effect of partial failure or illegality of consideration. 117: 501-509.

### § 3. — Sales of Property not in Existence.

In general. 81: 42.

Possibilities and contingencies. 81: 46.

### § 4. Of Secrets.

Of trade secret or secret process. 133: 765-767.

### § 5. Title Acquired by Purchase from One Without Title.

Seller can transfer no more interest than he has. 3: 196.

Possession only prima facie evidence of title. 3: 196.

No distinction between government sale and private sale. 3: 197.

Sale in open market. 3: 197.

Where property is changed or enhanced in value. 3: 197.

Bona fide purchase from one holding under conditional sale. 3: 198.

Exceptions to rule that seller can convey no better title than he holds. 3: 199.

— Stolen bank bills. 3: 199.

— Stolen note transferable by delivery. 3: 200.

— Stolen government bonds and stock certificates. 3: 200.

— Bills of lading and warehouse receipts. 3: 200.

— Commercial paper purchased for value. 3: 200.

— Sale for cash, vendee in possession without payment. 3: 200.

Title or right to reclaim reserved. 3: 200.

Apparent ownership. 3: 201.

— Agent or factor. 3: 201.

— Merchant, bailee or pledgee. 3: 202.

Purchase from fraudulent vendee. 3: 202.

Judicial sales. 3: 203.

Sale by prize court without jurisdiction. 3: 204.

Broker purchasing from principal. 3: 204.

Purchase of cargo from master of vessel. 3: 204.

Pledge by qualified owner. 3: 204.

Remedies of purchaser where he acquires no title. 3: 204.

Remedies of owner of goods. 3: 205.

Evidence—Presumptions and burden of proof. 3: 205.

— Declarations. 3: 206.

### § 6. Same.

Title acquired by bona fide purchasers of stolen property. 103: 979-982.

### § 7. Implied Warranty of Quality.

Rule of caveat emptor—In general. 102: 607.

— As affected by knowledge of defects or inspection. 102: 608.

— As affected by sound price or express warranty. 102: 609.

— As affected, by refusal to warrant, custom or usage. 102: 611.

Scope of implied warranty—Highest quality of goods. 102: 611.

— Merchantability and deterioration in transit. 102: 611, 612.

Particular kinds of sales—By sample. 102: 612.

— By description. 102: 614.

Sale by manufacturer—In general. 102: 615.

— For a particular purpose. 102: 616.



- By a particular description. 102: 618.  
 Risk on purchaser directing shipment. 26: 451.
- Sale of article for a special purpose. 102: 619.  
 Risk on purchaser accepting bill of lading. 26: 452.
- Machinery. 102: 620.  
 Risk on seller taking bill in own name. 26: 453.
- Brick and stone. 102: 621.  
 Risk on seller giving carrier imperfect directions. 26: 453.
- Commercial fertilizer. 102: 621.
- Horses and cattle. 102: 622.
- Breeding stock. 102: 622.
- Seeds and plants. 102: 623.
- Food. 102: 623.
- Stock food. 102: 625.
- Drugs. 102: 625.
- § 8. Lien of Seller.**  
 Existence and explanation. 83: 451.  
 Devestment. 83: 456.  
 Waiver. 83: 456.
- § 9. Passing of Title.**  
 When title passes to buyer. 138: 905.
- § 10. — When Title Does not Pass Though Sale is not Expressly Conditional.**  
 In general. 120: 869.  
 When condition has been waived. 120: 871.  
 When condition has not been waived. 120: 876.
- § 11. Rescission.**  
 For fraud in obtaining credit. 18: 362-365.
- § 12. — Countermand of Executory Contract.**  
 Power to countermand. 94: 119.  
 Effect. 94: 120.  
 Damages. 94: 121-125.
- § 13. Risk of Loss.**  
 Rule that risk follows title. 75: 77.  
 Effect of contract of sale at "buyer's risk." 75: 77.  
 Seller's risk. 75: 78.  
 Defective cars and packing. 75: 79.  
 Goods sold in transit. 75: 79.
- § 14. Who Bears Loss Before Price is Paid.**  
 Simple sales. 22: 866.  
 Conditional sales. 22: 867, 868.  
 Executory sale. 22: 868.
- § 15. Who must Bear Loss of Goods in Transit.**  
 General rule. 26: 451.
- § 16. Rights and Remedies of Parties.**  
 Rights of seller on refusal of buyer to complete sale by appropriation of goods to be selected. 33: 797.  
 Carelessness as bar to relief from misrepresentation. 32: 384.  
 Right to sue in assumpsit for goods sold. 134: 195.  
 Denials on information and belief. 133: 117.
- § 17. Stoppage in Transitu.**  
 Mode of exercising the right. 1: 312-314.
- § 18. Conditional Sale.**  
 Right of seller to recover price of property destroyed before passing of title to buyer. 138: 903, 905.
- § 19. — What Constitutes.**  
 Distinguished from absolute sale. 46: 295.  
 Formal requisites. 46: 295.  
 Retention of title by seller until payment. 46: 295.  
 Sale on approval or trial. 46: 296.  
 Lease of personalty reserving title until stipulated payments are made. 46: 296.  
 Consignments to agent for purpose of sale. 46: 297.  
 Goods to be paid out of earnings or profits. 46: 297.  
 Reservation of title to secure unpaid purchase money. 46: 297, 298.
- § 20. — Distinguished from Other Transactions.**  
 Mortgage. 94: 234; 1: 63, 64.  
 Pledge or security. 94: 240.  
 Consignment. 94: 241.  
 Lease. 94: 248.  
 Sale or return. 94: 254-258.  
 Distinguished from mortgage. 1: 63, 64.

**§ 21. — When Purchaser may Transfer Perfect Title.**

In general. 134: 277.

General rule regarding bona fide purchasers. 134: 278.

Effect of giving buyer authority to resell. 134: 279.

When authority to resell is implied. 134: 281.

— Limitation of the rule. 134: 285.

**§ 22. — Rights and Remedies of Seller on Breach.**

In general. 133: 563.

Recovery of goods. 133: 564.

— Substantial default necessary. 133: 565.

— Default in installments or interest. 133: 565.

— Where part payment has been made. 133: 565.

— Sale of merchandise to be resold. 133: 566.

— Nonperformance by seller bars recovery. 133: 566.

Mode of retaking property. 133: 567.

Conditions precedent to right to retake. 133: 569.

Defenses. 133: 573.

Pleading and evidence. 133: 574, 575.

Trial and judgment. 133: 575.

**SALOON-KEEPERS.**

• Liability for acts of drunkard. See Intoxicating Liquors, § 2.

**SALT.**

As a necessary of life. See Monopolies, § 1.

**SANITARY BOARDS.**

See Health.

Quarantining diseased animals. See Animals, § 8.

**SATISFACTION.**

Discharge of contract obligations or satisfaction for injuries by offer and acceptance of something different from what might have been legally claimed. See Accord and Satisfaction, § 4.

Vacating satisfaction of judgment. See Judgment, § 49.

**SATISFACTION AND EXECUTION.**

Vacating because of failure of title of purchaser. See Execution, § 5.

**SATISFIED JUDGMENT.**

Right to appeal from. See Appeal and Error, § 3.

Validity of execution sale under. See Execution, § 7.

Validity of judicial sale made under. See Judgment, § 2.

**SAVINGS BANKS.**

Duty as to deposits, nature and character of pass-books, rules of bank, by-laws and regulations. See Banks and Banking, §§ 22-26.

**SAWMILL.**

As building subject to arson. See Arson, § 2.

**SCAFFOLDS.**

Care required of persons working on scaffolds over thoroughfares. See Negligence, § 2.

**SCALES.**

Right to build on streets. See Municipal Corporations, § 22.

**SCALPING TICKETS.**

Power to declare ticket scalping a crime. See Criminal Law, § 1.

Theater tickets. See Theaters and Shows, § 1.

**SCHEDULES.**

Of property of insolvents. See Assignments for Benefit of Creditors, § 1.

**SCHOOLHOUSE.**

As building subject to arson. See Arson, § 2.

**SCHOOLS AND SCHOOL DISTRICTS.**

POWERS AND LIABILITIES OF TEACHERS, § 1.

COMPULSORY VACCINATION, § 2.

SECTARIAN SCHOOLS, § 3.

SECTARIAN RELIGIOUS TEACHING, § 4.

GROUND FOR SUSPENSION, EXPULSION OR EXCLUSION, § 5.

Acquisition of title to school lands by adverse possession. See Adverse Possession, § 1.

Right of school teachers to exemptions as laborers. See Exemptions, § 3.

Liability of school district to garnishment. See Garnishment, § 3.

Applicability of statute of limitations to actions by school boards and districts. See Limitation of Actions, § 7.

Records of meetings of school boards. See Municipal Corporations, § 7.

Reform schools. See Reformatories, § 1.

Taxation for support of. See Taxation, § 3.

**§ 1. Powers and Liabilities of Teachers.**

Authority to punish pupil. 102: 537, 538.

Right to make and enforce rules. 102: 539.

Power to suspend or expel. 102: 540.

Civil liability for excessive punishment. 102: 540.

Criminal liability for excessive punishment. 102: 541.

— Punishment through malice. 102: 543.

— How determined. 102: 543.

— Presumption and burden of proof. 102: 544.

### § 2. Compulsory Vaccination.

Validity of compulsory vaccination laws. 103: 864-879.

### § 3. Sectarian Schools.

What constitutes a sectarian institution. 8: 411.

Constitutional provisions. 8: 414.

What constitutional provisions are self-executing. 8: 415.

### § 4. Sectarian Religious Teaching.

Constitutional provisions construed. 105: 152.

Religious exercises—Prayer and hymns. 105: 152.

— Reading Bible. 105: 153.

— Chapel exercises. 105: 155.

Employment of sectarian teachers. 105: 155.

What is a sectarian institution. 105: 155.

Use of schoolhouse for religious meetings. 105: 156.

Use of church for school purposes. 105: 157.

### § 5. Grounds for Suspension, Expulsion or Exclusion.

Suspension and expulsion. 65: 330.

Power of boards and trustees to make rules. 65: 332.

Rules of teacher. 65: 333.

Exclusion of negroes, segregation of races. 65: 335.

Exclusion of unvaccinated children. 65: 338.

Exclusion of diseased children. 65: 338.

Exclusion for refusal to conform to rules. 65: 339.

Exclusion for mental incompetency. 65: 339.

Exclusion for immorality or profanity. 65: 339.

### SCIENTIFIC FACTS.

Judicial notice of. See Evidence, § 1.

### SCIRE FACIAS.

To revive dormant judgment. See Judgment, § 52.

### § 1. General Note.

Definitions. 122: 70.

Classification, nature and object. 122: 73.

Abolition or continuance of remedy. 122: 73.

To enforce obligations of record, bonds and judgments. 122: 73-76.

To enforce mortgages. 122: 77.

To enforce mechanics' liens. 122: 78.

To dissolve corporation or forfeit charter. 122: 78.

To annul letters patent. 122: 79.

Effect of failure to prosecute. 122: 83.

Proceedings to obtain. 122: 89.

When writ must be sued out. 122: 107.

Pleadings. 122: 90, 91.

— Reply. 122: 107.

From what counts and to what places writ issues. 122: 91.

Form and contents of writ. 122: 92.

Amendments. 122: 96.

Service. 122: 98-100.

Return. 122: 101.

Defenses. 122: 103.

Right to jury trial. 122: 108.

Judgment. 122: 109, 110.

— Default. 122: 102.

Form of execution upon. 122: 113.

Second scire facias. 122: 113.

### § 2. Parties.

Who may prosecute. 122: 83.

Against whom may be prosecuted—Original parties. 122: 85.

— New parties. 122: 86-88.

### SCOPE OF AUTHORITY.

Acts of agents beyond scope of authority. See Principal and Agent, § 6.

### SCOPE OF EMPLOYMENT.

Liability of master for injury to servant voluntarily performing work outside of employment. See Master and Servant, § 16.

Liability of master for injuries by servant outside of scope of employment. See Master and Servant, § 31.

### SEAL.

Necessary to constitute an instrument color of title. See Adverse Possession, § 9.

On chattel mortgage. See Chattel Mortgages, § 2.

Of corporations. See Corporations, § 8.

Omission of seal from civil process. See Process, § 1.

**SEAMEN.**

Power of legislature to exempt from license tax or give preference for public office to discharged navies. See Army and Navy, § 1.

Enticing from ship may be made a criminal offense. See Criminal Law, § 1.

Liability of ship owners for injuries to. See Master and Servant, § 15.

Oral wills of. See Wills, § 10.

**§ 1. Duties of Owners of Vessel Toward.**

Implied warranties in contract of employment. 1: 812.

As to provisions. 1: 813.

Medical care and nursing. 1: 814.

Where master sails on shares. 1: 814.

**SEARCHES AND SEIZURES.**

Admissibility of evidence obtained by wrongful search or seizure. See Criminal Law, § 23.

**§ 1. General Note.**

Security from unlawful search. 101: 328.

Search under warrant. 101: 329.

Requisites of warrant—Designation of place. 101: 331.

— Description of property. 101: 332.

Liability under warrant—Malicious prosecution. 101: 332.

— Trespass. 101: 333.

Warrant of arrest as search-warrant. 101: 334.

**§ 2. Right to Protection of Books and Papers from Examination.**

Construction of fourth and fifth amendments. 32: 643.

Seizure of private papers. 32: 644.

Illustrations. 32: 645, 646.

In purely civil cases. 32: 647.

Telegrams not protected. 32: 648.

Legislative proceedings. 32: 648.

**SEARCHING TITLES.**

Liability of registers of deeds for negligence in searching titles. See Registers of Deeds, § 1.

**SEATS.**

Duty of carrier to furnish seats for passengers. See Carriers, §§ 47, 48.

**SECOND APPLICATION.**

For extradition. See Extradition, § 13.

**SECONDARY EVIDENCE.**

Of contents of lost writing. See Lost Instruments, § 2.

Of contents of lost or destroyed will. See Wills, §§ 26-28.

**SECOND CONTINUANCE.**

Of criminal case. See Criminal Law, § 42.

**SECOND OFFENSE.**

Validity of law imposing higher penalty for. See Criminal Law, § 2.

**SECRECY.**

Of grand jury room. See Grand Jury, § 1.

**SECRET INSTRUCTIONS.**

Effect of secret instructions to agent on liability of principal. See Principal and Agent, § 14.

**SECRET PROCESS.**

Protection of. See Patents, § 1.

Sale of. See Sales, § 4.

**SECTARIAN SCHOOLS.**

Sectarian schools and sectarian teaching. See Schools and School Districts, §§ 3, 4.

**SECTION FOREMAN.**

As vice-principal. See Master and Servant, §§ 19, 20.

**SECURITY.**

Waiver of mechanic's lien by taking security. See Mechanics' Liens, § 7.

**SEDUCTION.**

Guardian's action for seduction of ward. See Guardian and Ward, § 4.

**§ 1. Nature and Elements.**

The offense as defined in the statutes of the various states. 8: 870-872.

**§ 2. Civil Liability.**

Foundation of action. 76: 659.

Action by parent. 76: 661.

— Previous chastity. 76: 664.

Action by seduced woman—Seductive arts. 76: 666.

— Previous chastity. 76: 668.

**§ 3. Criminal Liability.**

Use of seductive arts. 76: 670.

Promise of marriage. 76: 672.

Previous chaste character. 76: 678.

**SEEPAGE.**

Finding oil seepage as discovery of oil. See Mines and Minerals, § 2.

**SEISIN.**

Covenant of. See Covenants, § 5.

**SEISIN OF WIFE.**

Prerequisite to curtesy. See Curtesy, §§ 3, 2.

**SEIZURE.**

Unlawful seizure. See Searches and Seizures.

**SELECTING JURY.**

See Jury.

**SELF-DEFENSE.**

Law of self-defense as applied to homicide. See Homicide, § 6.

**SENATORS.**

Exemption from civil process. See Process, § 4.

**SENSE OF IMPENDING DEATH.**

Necessary to making of dying declaration. See Homicide, § 22.

**SENTENCE.**

Validity of sentence not authorized by law. See Criminal Law, § 64.

Postponing sentence. See Criminal Law, § 65.

Review of sentence on habeas corpus. See Habeas Corpus, § 7.

**SEPARATE TRIAL.**

Of conspirators. See Conspiracy, § 6.

**SEPARATION.**

Of husband and wife as defense in prosecution for bigamy. See Bigamy, § 3.

Of husband and wife. See Husband and Wife, §§ 29-31.

**SEPARATION OF JURY.**

Effect of. See Criminal Law, § 55.

Effect of. See Trial, § 9.

**SERVANTS.**

See Master and Servant.

**SERVICE.**

Of summons in civil actions. See Process, § 5.

Of subpoena duces tecum. See Witnesses, § 3.

**SERVICES.**

Of adopted child. See Adoption, § 3.

**SERVITUDES.**

See Additional Servitudes.

**SETOFF AND COUNTERCLAIM.**

Setoff of demands against bank in hands of receiver. See Banks and Banking, § 21.  
Counterclaims in forcible entry suits. See Forcible Entry and Detainer, § 8.  
Setoff of judgment against judgment. See Judgment, § 54.

**§ 1. Barred Claims.**

Setoff and claims barred by statute. 3: 63.

**§ 2. Setoff After Insolvency.**

General principles governing equitable setoff. 47: 578.

Insolvency as ground for equitable relief. 47: 579.

Demands not due. 47: 580.

Purchase of claim with knowledge of insolvency. 47: 582.

Defeat of setoff by assignment. 47: 582.

Rights and liabilities of assignee or receiver. 47: 582.

Account, agency, attachment and attorney's lien. 47: 583.

In favor of bank. 47: 584, 591, 594.

Against bank. 47: 585, 591, 594.

By or against corporations. 47: 587.

Insolvent estate of decedent. 47: 588.

Insolvent insurance company. 47: 589.

Joint and separate debts. 47: 591.

Judgment. 47: 591.

Landlord and tenant. 47: 591.

Mortgage debts. 47: 591.

Insolvency of national banks. 47: 591.

Partnerships. 47: 592.

Principal and surety. 47: 592.

Promissory notes. 47: 593.

Execution purchaser. 47: 594.

Railroads. 47: 594.

Savings banks. 47: 594.

Trusts and trustees. 47: 595.

**SETTING APART.**

Modes of setting apart dower. See Dower, § 3.

**SETTING ASIDE.**

Award of arbitrators. See Arbitration and Award, § 3.

Written instruments in equity. See Cancellation of Instruments.

Of judgment. See Judgment, §§ 14-19.

**SETTING OUT FIRE.**

Civil liability for. See Fires, § 2.

**SETTLEMENT.**

Acceptance in settlement of a debt or obligation for injury of something different from what might be legally claimed. See Accord and Satisfaction.

**SETTLERS.**

On public lands. See Public Lands, §§ 1-4.

**SEVEN YEARS' ABSENCE.**

Presumption of death from. See Death, § 1.

**SEVERABILITY.**

Of perpetuities and forbidden trusts. See Perpetuities, § 3.

**SEVERANCE.**

Of minerals from surface estate. See Mines and Minerals, § 8.

**SEVERED ESTATES.**

Possession of surface as adverse possession of severed mineral estate. See Adverse Possession, § 12.

**SEWERS.**

Liability of cities for defects in. See Municipal Corporations, § 33.

Pollution of waters by city sewers. See Waters and Watercourses, § 8.

**SEXUAL DISEASES.**

See Venereal Disease.

**SEXUAL INTERCOURSE.**

Excessive intercourse as cruelty. See Divorce, § 4.

**SEXUAL OFFENSES.**

See Adultery; Bigamy; Fornication; Incest; Lewdness; Miscegenation; Prostitution; Seduction; Sodomy.

**SHADE TREES.**

Rights of abutting owners in trees along highway. See Highways, § 4.

**SHAM PLEADINGS.**

What constitutes and relief against. See Pleading, § 3.

**SHEEP.**

See Animals.

**SHEEP-WORRYING DOGS.**

Right to kill. See Animals, § 2.

**SHELLEY'S CASE.**

Rule in. See Life Estates, § 2; Wills, § 36.

**SHERIFFS AND CONSTABLES.**

RIGHT TO PURCHASE AT FORCED SALE, § 1.

INDEMNITY TO SHERIFFS, § 2.

RIGHT TO INDEMNITY BEFORE EXECUTION OF CIVIL PROCESS, § 3.

LIABILITY TO INDIVIDUALS FOR MISFEASANCE OR NONPERFORMANCE OF OFFICIAL DUTIES, § 4.

LIABILITY OF SURETIES, § 5.

LIABILITY OF SURETIES FOR PERSONAL INJURIES, § 6.

POSSE COMITATUS, § 7.

Right to arrest with or without warrant, force permissible and mode of making arrest. See Arrest, § 1.

**§ 1. Right to Purchase at Forced Sale.**

Right to purchase property sold by themselves at judicial, execution or other compulsory sales. 136: 791-793.

Right of deputies or agents to purchase at sales made by sheriffs or constables. 136: 792.

**§ 2. Indemnity to Sheriffs.**

Validity in general. 86: 554.

— Bonds defectively executed. 86: 556.

— Indemnity against past acts. 86: 556.

— Bond not signed by principal. 86: 557.

When void. 86: 557.

Indemnity implied in favor of officer for damages sustained by him in execution of civil process. 89: 448-450.

Duty and liability of officer receiving a bond of indemnity before or after levy of execution or attachment. 15: 315, 316.

**§ 3. Right to Indemnity Before Execution of Civil Process.**

Denial of right. 89: 413.

Under the English practice. 89: 414.

Difference between American and English rule. 89: 415.

When and how indemnity must be demanded. 89: 416.

Amount to which officer is entitled. 89: 417.

Against what acts officer may require. 89: 417.

Writs in the enforcement of which indemnity may be required. 89: 418.

Implied liability to indemnity officer for loss. 89: 448, 449.

#### § 4. Liability to Individuals for Misfeasance or Nonperformance of Official Duties.

Importance of the office. 95: 96.

Acting under process. 95: 96.

Failure to levy. 95: 96.

Delay in levying. 95: 101.

Excessive levy. 95: 102.

Insufficient levy. 95: 103.

Failure to return execution and false return. 95: 104.

Attachment proceedings. 95: 105.

Care of property. 95: 107.

— Excuses for loss. 95: 108.

Receiving other than money in payment. 95: 109.

Failure to pay over money. 95: 110.

Disobeying plaintiff's instructions. 95: 112.

Taking bonds. 95: 113.

Escape of prisoner. 95: 115.

Seizure of exempt property. 95: 118.

Seizure of property of third person. 95: 120.

Indemnity against liability. 95: 126.

Use of force. 95: 128.

Lynching of prisoner. 95: 128.

Liability to surety. 95: 128.

Deputies. 95: 129.

Summary remedies, amercement. 95: 129.

#### § 5. Liability of Sureties.

In general. 91: 531.

Failure to execute writ. 91: 531.

— As agent for collection. 91: 532.

Seizure of property without process. 91: 532.

Arrest without process. 91: 533.

Acts under irregular or void process. 91: 535.

Seizure of exempt property. 91: 537.

Seizure of property of stranger to writ. 91: 537.

Arrest of stranger to writ. 91: 540.

Acts in excess of authority conferred by process. 91: 541.

Injury to property in custody. 91: 541.

Injury to person in custody. 91: 541.

Escape of prisoner. 91: 543.

Improper release of prisoner. 91: 543.

Proceeds of levy. 91: 545.

Taking security. 91: 549.

Acts as tax ex-officio collector or in other capacity. 91: 551.

When sureties are not liable for acts of officer because not done by virtue of the office, but merely under color of office. 78: 420-425.

#### § 6. Liability of Sureties for Personal Injuries.

In attempting to prevent escape. 71: 519.

Acts outside of state. 71: 520.

In making arrests. 71: 520.

In abetting or resisting mob. 71: 521.

Acts without legal authority. 71: 521.

#### § 7. Posse Comitatus.

Right of sheriff to call. 44: 136: 137.

Duty to join. 44: 136.

Indictment for refusal to join. 44: 137.

Justification for acts done. 44: 137.

Necessity for presence of officer. 44: 139.

Right of members to claim rewards. 44: 140.

### SHERIFF'S DEED.

As adverse possession. See Adverse Possession, § 10.

Reformation of. See Reformation of Instruments, § 3.

### SHIPPING.

RELATION OF PART OWNERS OF VESSELS, § 1.

RIGHTS AND LIABILITIES OF PART OWNERS OF VESSELS—AS TO EACH OTHER, § 2.

— AS TO THIRD PERSONS, § 3.

DEMURRAGE, § 4.

See, also, Collision; Seamen; Wharves.

Liability of ship owners for injuries to sailors. See Master and Servant, § 15.

Officers of vessels as vice-principals. See Master and Servant, § 19.

Duty of ship owner toward sailors. See Seamen, § 1.

Place of taxation of vessels. See Taxation, § 13.

#### § 1. Relation of Part Owners of Vessels.

Tenants in common. 90: 358.

Not joint tenants. 90: 359.

Partnership. 90: 360.

— What constitutes. 90: 361.

— Voyage covered by. 90: 365.

Fiduciary nature of relation. 90: 365.

## § 2. Rights and Liabilities of Part Owners of Vessels—As to Each Other.

- Employment of vessel—Public interest involved. 90: 367.  
 — Will of majority. 90: 367–369.  
 — Where opposing interests are equal. 90: 370.  
 — Control in appointment of master. 90: 370.  
 — Protecting dissenting interests by bond. 90: 373.  
 — Jurisdiction over questions concerning. 90: 377.  
 Liability for failure to employ vessel. 90: 380.  
 Liability for destruction of vessel. 90: 381.  
 Right to earnings of vessel. 90: 382.  
 — Where part owner dissents from employment. 90: 382.  
 — Mortgagee. 90: 383.  
 Disposal of shares in vessel. 90: 384.  
 Privity between co-owners. 90: 385.  
 Contribution between co-owners. 90: 386.  
 Lien of part owner for debts and advances—On co-owner's share in vessel. 90, 387.  
 — On co-owner's share in earnings. 90: 388.  
 Accounting between—At law. 90: 390.  
 — In admiralty. 90: 391.  
 — In equity. 90: 393.  
 Joinder of parties in suit for. 90: 393.

## § 3. — As to Third Persons.

- Liability of part owner for acts of others—In purchase of cargo. 90: 394.  
 — Contracts for payment of personal debts from earnings of vessel. 90: 394.  
 — Negotiable instruments. 90: 395.  
 — Repairs and supplies. 90: 395.  
 — Where co-owner acts as master. 90: 397.  
 — Where part owner dissents from voyage or revokes authority of others. 90: 399.  
 Persons liable as part owners. 90: 402.  
 Extent of liability. 90: 403.  
 What discharges part owner. 90: 406.  
 — Settlement of accounts. 90: 407.  
 Actions by or against third persons—  
 Joinder of parties. 90: 407.  
 — Objections to nonjoinder. 90: 409.

— Attachment of part owner's share. 90: 409.

## § 4. Demurrage.

- Defined. 30: 634.  
 Damages recoverable without contract. 30: 636.  
 Burden of proof in absence of stipulation for. 30: 638.  
 Waiting for turn. 30: 638.  
 Liability of consignee. 30: 638.  
 For vessel injured by collision. 30: 639.  
 Illegal seizure of vessel. 30: 639.  
 Lay days. 30: 639.  
 Risks assumed by charterer after reaching destination. 30: 640.  
 Construction of charter-party. 30: 640.  
 Lien for demurrage. 30: 641.

## SHIPWRECK.

Presumption of survivorship of persons perishing in common disaster. See Death, § 2.

## SHORE LINES.

As boundaries. See Boundaries, § 4.

## SHORES.

Of navigable streams and lakes. See Navigable Waters, § 4.  
 Apportionment of accretions to shores of non-navigable lakes, bays or coves. See Waters and Watercourses, § 6.

## SHUTTING OFF WATER.

Remedies of owner to prevent. See Waters and Watercourses, § 13.

## SICK PERSONS.

Right of carrier to refuse to carry. See Carriers, § 40.

## SIDE LINES.

Following ore vein through side lines of mineral patent. See Mines and Minerals, § 5.

## SIDEWALKS.

See Municipal Corporations, §§ 21–23.

## SIGNALS.

Duty of vessels to give and answer. See Collision, § 1.

## SIGNATURES.

To chattel mortgage. See Chattel Mortgages, § 2.  
 Of contract in ignorance of contents. See Contracts, § 11.  
 Photographic reproduction of. See Evidence, § 22.  
 Of contract of guaranty. See Guaranty, § 3.  
 To will. See Wills, § 5.  
 To holographic will. See Wills, § 9.



**SIGNS.**

As trademarks. See Trademarks and Trade Names, § 2.

**SIMPLE TRUST.**

Creation by parol. See Trusts, § 2.

**SINGLE OFFENSE.**

Offenses continuing throughout one day as single offense. See Criminal Law, § 3.

**SITUS OF PROPERTY.**

For purpose of garnishment. See Garnishment, § 2.

For purpose of taxation. See Taxation, § 13.

For purpose of collateral inheritance tax. See Taxation, § 27.

**SKILL.**

Liability of abstractor for want of. See Abstracts of Title, § 1.

Judicial notice of. See Evidence, § 1.

Required of physicians and surgeons. See Physicians and Surgeons, § 1.

**SLANDER.**

Distinguished from libel. See Libel and Slander, § 2.

**SLEEPING-CARS.**

See Carriers, §§ 53, 54.

Liability of railroads hauling. See Carriers, § 43; Railroads, § 12.

**SLEEPING DEBTS.**

Revival of. See Bankruptcy, § 1.

**SLEEPING PASSENGER.**

Duty of carrier to awaken. See Carriers, § 50.

**SLOT MACHINES.**

As gambling devices. See Gaming, § 5.

**SMOKE NUISANCE.**

See Nuisance, § 7.

**SNATCHING.**

Stealing by, as robbery. See Robbery, § 3.

**SNEERING.**

In discussing evidence in instructions. See Trial, § 5.

**SNOW.**

Duty of street railroad company to remove snow from tracks. See Street Railroads, § 2.

**SOCAGE GUARDIANS.**

See Guardian and Ward, § 2.

**SODOMY.**

Divorce for. See Divorce, § 4.

**SOLAR TIME.**

See Time, § 1.

**SOLDIERS.**

Power of legislature to exempt soldiers from license tax or give them preference for public office. See Army and Navy, § 1.

Domicile of. See Domicile, § 1.

Exemption from civil process. See Process, § 4.

Discrimination in favor of in imposing license tax. See Licenses, § 4.

Nuncupative wills of. See Wills, § 10.

**SOLEMNIZATION OF MARRIAGE.**

As element of bigamy. See Bigamy, §§ 1, 3.

**SOLICITATION.**

Invalidity of retainer of attorney procured by solicitation. See Attorney and Client, § 7.

Of bribe. See Bribery, § 1.

**SPARK-ARRESTERS.**

Validity of law requiring railroads to use. See Railroads, § 14.

**SPREAD OF CONTAGION.**

Civil and criminal liability for. See Health, §§ 1, 3.

**SPREAD OF FIRE.**

Civil liability for causing. See Fires, § 1.

**SPECIAL DEPOSITS.**

Lien of bank on. See Banks and Banking, § 12.

**SPECIAL ELECTION.**

Notice or proclamation of. See Elections, § 4.

**SPECIAL GUARANTY.**

What constitutes. See Guaranty, § 2.

**SPECIALISTS.**

Degree of care and skill required of. See Physicians and Surgeons, § 1.

**SPECIAL LAWS.**

Prohibited where general law can be made applicable. See Constitutional Law, § 23.

**SPECIAL LIEN.**

Of attorney for services. See Attorney and Client, § 15.

**SPECIAL PLEA.**

Of statute of frauds. See Frauds, Statute of, § 10.

**SPECIAL STOCK.**

See Corporations, § 19.

**SPECIFIC REQUESTS.**

Nature and essentials. See Wills, §§ 46, 47.

**SPECIFIC PERFORMANCE.**

IN GENERAL, § 1.

NATURE AND GROUNDS OF REMEDY, § 2.

NECESSITY THAT CONTRACT BE FAIR AND EQUITABLE IN ALL ITS PARTS, § 3.

CONTRACT MUST BE FREE FROM FRAUD, CONCEALMENT AND UNDUE INFLUENCE, § 4.

EFFECT OF SUBSEQUENT CHANGES IN CIRCUMSTANCES OR SITUATION OF PARTIES OR SUBJECT MATTER, § 5.

CONTRACTS FOR PERSONAL SERVICES, § 6.

CONTRACTS FOR SALE OF CORPORATE STOCK, § 7.

OPTIONAL CONTRACT TO CONVEY LAND, § 8.

REFUSAL BECAUSE OF INABILITY OF COURT TO ENFORCE DECREE, § 9.

Against unknown owners. See Absentees, § 2.  
Compelling issue or transfer of corporate stock. See Corporations, § 22.

**§ 1. In General.**

Basis of doctrine. 128: 383.

Discretion of court to grant. 128: 384.  
Must result beneficially to plaintiff. 128: 400.

Distinction between sufficiency of showing to obtain and to resist specific performance. 128: 391.

Not defeated by sufficiency of evidence to rescind or cancel contract. 128: 390.

Refusal of specific performance of valid contract not based on nature or class of property. 128: 382-413.

To compel registry of transfer of corporate stock. 136: 1039.

**§ 2. Nature and Grounds of Remedy.**

In general. 140: 56.

Analogy to injunction. 140: 57.

Discretion of court. 140: 57.

Certainty of contract. 140: 58.

Mutuality of contract. 140: 59.

Intervening rights of third persons. 140: 60.

Contracts between individual and state. 140: 61.

Administering complete relief in one action. 140: 62.

**§ 3. Necessity That Contract be Fair and Equitable in All Its Parts.**

General rule illustrated. 128: 391.

Effect of inadequacy of consideration. 128: 395.

**§ 4. Contract must be Free from Fraud, Concealment or Undue Influence.**

Effect of fraud or misrepresentation. 128: 401-407.

Effect of concealment of facts affecting price asked or the desire to sell. 128: 407.

Undue advantage or duress. 128: 409.

Extortion or illegal promises. 128: 410.

Incapacity, intoxication, old age, or infirmity of mind or body. 128: 410.

**§ 5. Effect of Subsequent Changes in Circumstances or Situation of Parties or Subject Matter.**

Change of circumstances. 128: 412.

Insolvency of one of the parties. 128: 412.

Increase or decrease in value of subject matter. 128: 413.

**§ 6. Contracts for Personal Services.**

Material or mechanical service. 140: 62.

Unique or extraordinary service. 140: 62.

Requiring skill, judgment or discretion. 140: 63.

Requiring continuous acts. 140: 64.

To construct or repair railroad. 140: 64.

To furnish freight for railroad. 140: 65.

To build and maintain depot. 140: 66.

To operate railroad. 140: 66.

To lay tracks. 140: 67.

Between railroad and express company. 140: 68.

Between railroad and telegraph company. 140: 69.

Between railroad and sleeping-car company. 140: 70.

To construct track crossings. 140: 71.

To construct drain, ditch or levee. 140: 72.

To install and maintain waterworks. 140: 73.

To build bridges. 140: 74.

To clear land, load gravel or furnish stone. 140: 75.

To build city hall on certain land. 140: 76.  
 Pertaining to construction of building. 140: 76.  
 Pertaining to electrical devices. 140: 77.  
 Pertaining to interest in invention. 140: 78.  
 Pertaining to mines. 140: 78.  
 In consideration of marriage. 140: 80.  
 Of separation of husband and wife. 140: 82.  
 For support of children. 140: 83.  
 For support of relatives or strangers. 140: 84.  
 Between master and servant. 140: 85.  
 Between attorney and client. 140: 85.  
 To sell specific articles. 140: 86.  
 To advertise specific articles. 140: 87.  
 To enter into partnership. 140: 87.

#### § 7. Contracts for Sale of Corporate Stock.

Development of doctrine and general principles. 135: 689.  
 Contract enforced when stock has a peculiar or special value to the buyer. 135: 693.  
 Contract enforced when sale of stock is coupled with sale of land. 135: 696.  
 Contract enforced when stock is subject to a trust. 135: 697.  
 Contract enforced in case of insolvency of seller. 135: 698.  
 Miscellaneous cases. 135: 698.  
 Essential elements of bill to enforce specific performance of sale of stock. 135: 700.

#### § 8. Optional Contract to Convey Land.

In general. 118: 592.  
 Mutuality. 118: 594.  
 Consideration. 118: 597.  
 Compliance with terms of option. 118: 597.  
 Option under lease. 118: 598.  
 Rights of assignee. 118: 600.

#### § 9. Refusal Because of Inability of Court to Enforce Decree.

Inability to frame a decree. 68: 753.  
 Decree ineffective or inexpedient. 68: 753.  
 Contracts which cannot be enforced by machinery of courts. 68: 754.  
 Building contracts. 68: 755.

Contracts pertaining to mines or quarries. 68: 760.  
 Contracts for personal services. 68: 761.  
 — Actors, performers and ball players. 68: 762.

#### SPECTATORS.

Mistrial for demonstrations and remarks of. See Criminal Law, § 48.

#### SPEECHES.

As evidence of conspiracy. See Conspiracy, § 5.

#### SPEED.

Of steamboats. See Collision, § 1.  
 Of automobiles and other vehicles on public highways. See Highways, §§ 9, 10.

#### SPEEDY TRIAL.

Right of accused to. See Criminal Law, § 41.  
 Discharge of prisoner for refusal of. See Habeas Corpus, § 2.

#### SPENDTHRIFTS.

§ 1. Spendthrift Trusts.  
 General note. 24: 686-697.

#### SPIRITUALISM.

Belief in spiritualism as insane delusion. See Insane Persons, § 1.  
 As insane delusion avoiding will. See Wills, § 17.

#### SPIRITUAL MEDIUM.

Validity of contracts with. See Contracts, § 7.  
 Deeds to. See Deeds, § 1.

#### SPITE FENCES.

Right to construct and maintain. See Adjoining Land Owners, § 2.

#### SPOLIATION.

Of official bond distinguished from alteration. See Officers, § 17.

#### SPOOKS.

Belief in spooks as insane delusion. See Insane Persons, § 1.

#### SPUR TRACKS.

As additional servitudes. See Railroads, § 3.  
 Right of street railroads to maintain. See Street Railroads, § 2.

#### STABLE.

As building subject to arson. See Arson, § 2.  
 Theft from, as burglary. See Burglary, § 1.

**STALE DEMANDS.**

Refusal of equity to enforce. See Equity, §§ 7, 8.

**STALE JUDGMENTS.**

Actions to revive. See Judgment, § 52.

**STAMPS.**

Effect of failure to stamp writings. See Internal Revenue, § 1.

**STANDARD TIME.**

See Time, § 1.

**STANDING TIMBER.**

Penalties and damages for cutting, injuring or removing. See Woods and Forests, § 1.

**STARE DECISIS.**

Limitations on doctrine. See Courts, § 6.

**STATED ACCOUNTS.**

See Account Stated.

**STATES.**

ESTOPPEL AND BAR, § 1.

LEGISLATURE, § 2.

LEGISLATIVE APPORTIONMENT, § 3.

WHAT CONSTITUTES LEGISLATIVE AP-

PROPRIATION, § 4.

OBLIGATION TO PAY INTEREST ON INDEBTEDNESS, § 5.

INDEMNITY FROM SUIT, § 6.

See, also, Counties; Municipal Corporations; Schools and School Districts; Towns; United States.

Adverse possession of state lands. See Adverse Possession, § 1.

Power to regulate commerce. See Commerce, § 1.

Legislative apportionment of territory of state. See Constitutional Law, § 3.

Interstate extradition. See Extradition, § 2.

Immunity from garnishment. See Garnishment, § 3.

Persons concluded by judgment state or state officer. See Judgment, § 41.

Applicability of statute of limitations to actions by. See Limitation of Actions, § 7.

Mandamus against governor. See Mandamus, § 7.

Who are responsible bidders for state work. See Municipal Corporations, § 15.

Riparian rights of. See Navigable Waters, § 4.

Title to lands under water. See Navigable Waters, § 5.

Control of railroads. See Railroads, § 1.

Taxation of state property. See Taxation, §§ 6, 12.

**§ 1. Estoppel and Bar.**

Application of doctrine of estoppel to governmental bodies. 137: 356.

When statute of limitations begins to run in favor of state. 136: 476-479.

**§ 2. Legislature.**

Power to compel witnesses to attend and submit to examination. 1: 885. 886.

**§ 3. Legislative Apportionment.**

Validity of apportionment laws and power of courts to declare invalid. 35: 62-67.

**§ 4. What Constitutes a Legislative Appropriation.**

Review of decisions of various states. 22: 638-648.

**§ 5. Obligation to Pay Interest on Indebtedness.**

Inapplicability of general interest laws to the state. 22: 648.

**§ 6. Immunity from Suit.**

Waiver and evasion of immunity. 108: 831.

Whether immunity extends to officers. 108: 831.

Whether suit is against state or officer. 108: 832.

Actions involving tort. 108: 835.

Enforcement of unconstitutional law. 108: 836.

Infringement of patent. 108: 836.

Actions involving contracts. 108: 837.

Possession and title to real estate. 108: 838.

Possession and right to personality. 108: 840.

Control of public funds. 108: 841.

Recovery of taxes paid. 108: 841.

Enforcement of taxes. 108: 842.

Revocation of charter or license of corporation. 108: 843.

Regulation of charges of public service corporations. 108: 843.

Enjoining criminal prosecutions. 108: 844.

**STATE'S EVIDENCE.**

Validity of agreements to procure. See Criminal Law, § 35.

**STATISTICS.**

Judicial notice of. See Evidence, § 1.

## STATUTE OF LIMITATIONS.

Against bank depositor. See Banks and Banking, § 3.

## STATUTE OF USES.

See Charters, § 1.

## STATUTES.

PROOF OF ENACTMENT, § 1.

VALIDITY, § 2.

CONSTITUTIONALITY OF CODE AMENDMENTS AND REVISIONS, § 3.

CONSTRUCTION, § 4.

WHAT IS A GENERAL LAW, § 5.

LOCAL AND PRIVATE LAWS, § 6.

IRREPEALABLE LAWS, § 7.

REPEAL BY IMPLICATION, § 8.

SUFFICIENCY OF TITLE, § 9.

WHEN TITLE EMBRACES ONE SUBJECT AND WHAT IT MAY INCLUDE, § 10.

PROOF OF LAWS OF ANOTHER STATE OR COUNTRY, § 11.

Authorizing proceedings against unknown owners. See Absentees, § 2.

Validity of adoption laws. See Adoption, § 1.

Construction of quarantine laws. See Animals, § 8.

Regulating carrier's right to limit liability. See Carriers, § 20.

Statutory liability of stockholders for corporate debts. See Corporations, § 33.

Creating presumptions. See Evidence, § 6.

Exemption laws. See Exemptions, § 2.

Relating to life estates with power of disposal. See Life Estates, § 2.

Statute of limitations. See Limitation of Actions, § 1.

Retrospective operation of statute of limitations. See Limitation of Actions, § 6.

Extraterritorial effect of marriage laws. See Marriage, § 2.

Municipal ordinances. See Municipal Corporations, § 8.

Effect of repeal of statute declaring stream navigable. See Navigable Waters, § 3.

Usury laws. See Usury, § 1.

Vagrancy laws. See Vagrancy, § 1.

### § 1. Proof of Enactment.

By enrolled bill. 47: 815, 816.

By journals of legislature. 47: 816-820.

### § 2. Validity.

Validity of statute made to take effect upon the happening of some future event. 114: 317.

Retrospective laws. 120: 468-479.

### § 3. Constitutionality of Code Amendments and Revisions.

Criticism of California decisions. 86: 267.

"First impression" notion. 86: 268.

Amendatory statutes need only refer to original. 86: 268.

Scope of amendments. 86: 269.

Reference to a code by its name or title. 86: 271.

Does the name of a code sufficiently express its subject? 86: 272.

Broadness of title. 86: 272.

Titles of statutes need not disclose details. 86: 274.

Mandatory constitutions. 86: 274.

Codes and general statutes—Illustrations of sustainable titles. 86: 275.

Does systematic amendment amount to forbidden revision. 86: 276.

### § 4. Construction.

Province of courts. 12: 826.

Province of legislature. 12: 827.

Rules of construction. 12: 827.

Words must be given ordinary meaning. 12: 827.

### § 5. What is a General Law.

Defined and distinguished from special laws. 21: 780.

Substance controls form in testing. 21: 781.

What constitutes uniform operation. 21: 781.

Law relating to all in certain condition. 21: 781.

Law applying different rules to different classes. 21: 782.

Law relating to persons or things as a class. 21: 783.

Classification of cities and counties according to population. 21: 784.

Law applying to but one city. 21: 785-787.

Law conferring special privileges on a class. 21: 788.

Tax laws. 21: 789.

Railroad laws. 21: 789.

### § 6. Local and Private Laws.

What are. 1: 903, 904.

### § 7. Irrepealable Laws.

Laws in the nature of contracts. 1: 904.

Power of legislature to enact. 1: 904.

### § 8. Repeal by Implication.

Rule of construction determining. 88: 272.

- Necessity for repealing clause. 88: 272.
- Implied repeals not favored. 88: 273.
- Laws must have same object. 88: 273.
- Inconsistency and repugnancy—Necessity. 88: 274.
- Effect. 88: 275.
- Illustrations. 88: 276.
- Where new law covers entire subject. 88: 278.
- Effect of omission of provisions. 88: 280.
- Effect of negative words. 88: 281.
- Amendments. 88: 281.
- When repeal takes effect. 88: 282.
- General act repealing special act. 88: 282.
- Repugnant laws. 88: 284.
- General law covering entire subject. 88: 285.
- Effect of municipal charter. 88: 285.
- Special act repealing general. 88: 286.
- Revision or codification—New statute intended as a substitute. 88: 287.
- Effect of omitting prior acts. 88: 288.
- Acts passed at same session. 88: 289.
- Penal statutes. 88: 290.
- Same subject and object. 88: 291.
- Inconsistent and repugnant acts. 88: 291.
- Extent of repeal. 88: 292.
- General and special acts. 88: 294.
- Effect of constitutional provisions. 88: 294.
- Effect of unconstitutional law. 88: 295.
- Statutes adopting or repealing the common law. 88: 295.
- Statutes giving different powers, privileges and duties. 88: 296.
- § 9. Sufficiency of Title.**
- Constitutional provisions. 64: 70.
- Nature and object. 64: 72.
- Liberal construction. 64: 72.
- Generality of title. 64: 73.
- Title and act must correspond. 64: 73.
- Title need not contain details. 64: 74.
- Title sufficient if act be germane to general subject expressed in it. 64: 75.
- Void provisions. 64: 76.
- Void in part not wholly void. 64: 77.
- Comprehensive and restrictive titles. 64: 77.
- Amendatory acts. 64: 78.
- Supplementary acts. 64: 80.
- Repealing acts. 64: 80.
- Particular subjects—Acknowledgments. 64: 81.
- Adoption and adulteration. 64: 81.
- Animals. 64: 82.
- Appeal and writs of error. 64: 82.
- Appropriations and banking. 64: 83.
- Bonds. 64: 84.
- Bridges and ferries. 64: 85.
- Chattel mortgages. 64: 85.
- Conditional sales. 64: 85.
- Corporations. 64: 85.
- Counties. 64: 87.
- Courts. 64: 89.
- Crimes. 64: 90.
- Damages. 64: 92.
- Deeds. 64: 93.
- Descent and distribution. 64: 93.
- Docks and wharfs. 64: 94.
- Drains. 64: 94.
- Elections. 64: 94.
- Eminent domain. 64: 96.
- Fish and game. 64: 96.
- Fraudulent conveyances. 64: 96.
- Gambling. 64: 96.
- Growing of hedges. 64: 97.
- Horseracing and poolselling. 64: 97.
- Hotels and boarding-houses. 64: 97.
- Insane persons. 64: 98.
- Insolvency. 64: 98.
- Insurance. 64: 98.
- Intoxicants. 64: 98.
- Irrigation. 64: 102.
- Municipal corporations. 64: 102.
- Officers. 64: 103.
- Railroads. 64: 103.
- Taxes. 64: 104.
- § 10. When Title Embraces One Subject and What It may Include.**
- Effect of title containing more than one subject. 79: 456.
- Comprehensiveness of subject not prohibited. 79: 457.
- Doubts resolved in favor of statute. 79: 457.
- Matters germane to subject. 79: 460.
- Matters necessary to accomplish object. 79: 462.
- Details need not be mentioned. 79: 464.

Enumeration of details does not create more than one subject. 79: 464.

Use of words "and so forth" or "for other purposes." 79: 467.

Illustrations. 79: 467.

Amendments. 79: 480, 482, 484.

Restrictive titles of amendatory statutes. 79: 483.

#### § 11. Proof of Laws of Another State or Country.

What are foreign laws. 113: 869.

Necessity for proof. 113: 870.

Judicial notice of laws of sister state or foreign country. 113: 870.

Distinction between judicial notice of system of jurisprudence of foreign country and of what its law is on a particular subject. 113: 874.

Presumption as to existence of common law—General rule. 113: 875.

— State or country whose jurisprudence is not based on the common law. 113: 878, 879.

— Mode of determining what is common law of sister state. 113: 880.

Presumption as to statutory law—In general. 113: 880.

— Continued existence of law once proved to exist. 113: 881.

How presumption of similarity of foreign law with law of forum may be rebutted. 113: 881.

Mode of proof in general. 113: 881.

— By expert witnesses. 113: 882.

— By court decisions or treatises by recognized writers. 113: 883.

— How generally proved. 113: 883.

Determination of competency of evidence offered. 113: 884.

How meaning of law of another state is ascertained. 113: 884.

#### STATUTORY CAUSE OF ACTION.

Right to maintain suit on in another state. See Action, § 1.

#### STATUTORY LIENS.

See Liens, § 1.

Of attorney for services. See Attorney and Client, § 15.

#### STATUTORY MORTGAGE.

As equitable mortgage. See Mortgages, § 3.

#### STAY OF EXECUTION.

Otherwise than by statutory proceedings. See Execution, § 4.

#### STEADY EMPLOYMENT.

Construction and validity of contract for. See Master and Servant, § 2.

#### STEALING.

See Burglary; Larceny; Robbery.

#### STEAMBOATS.

Duty to avoid sail boats. See Collision, § 1.

#### STEAM ENGINES.

Frightening animals. See Railroads, § 10.

#### STEAM PROPELLED VEHICLES.

Use of highway by. See Highways, § 7.

#### STENCH.

Rights of adjoining land owners to maintain offensive fumes. See Adjoining Land Owners, § 2.

#### STENOGRAPHER'S NOTES.

As deposition. See Depositions, § 1.

As evidence. See Evidence, § 32.

#### STIFLING COMPETITION.

At auction sale. See Auctions and Auctioneers, § 6.

#### STIPULATIONS.

Implied authority of attorney to make. See Attorney and Client, § 8.

Validity of contracts controlling procedure or ousting jurisdiction. See Contracts, § 8.

Mandamus to enforce. See Mandamus, § 6.

#### STOCK.

Livestock. See Animals.

#### STOCK CLOCK.

As gambling device. See Gaming, § 5.

#### STOCKHOLDERS.

Right to inspect corporate books. See Corporations, § 10.

Expulsion. See Corporations, § 29.

Meetings. See Corporations, § 30.

Records of meetings. See Corporations, § 31.

Agreements to control future voting of stock. See Corporations, § 32.

Liability for corporate debts. See Corporations, §§ 33, 34.

Suing on behalf of corporation. See Corporations, § 35.

Liability of pledgee. See Corporations, § 36.

In consolidated corporations. See Corporations, § 66.

Limitation of actions against. See Limitation of actions, § 2.

**STOCKHOLDER'S LIABILITY.**

For corporate debts and acts. See Corporations, § 33.

**STOCKHOLDERS' MEETINGS.**

Right of presiding officer to reject votes. See Corporations, § 30.  
Records of. See Corporations, § 31.

**STOCK-JOBBER.**

See Gaming, § 2.

**STOCKMEN.**

As passengers. See Carriers, § 38.

**STOCK SUBSCRIPTIONS.**

Subscription contracts. See Corporations, § 12.  
Distinguished from other transactions. See Corporations, § 13.  
Liability of subscribers. See Corporations, § 14.  
Persons liable on subscription. See Corporations, § 15.  
Conditions precedent to liability of subscribers. See Corporations, § 16.  
Enforcing liability of subscribers. See Corporations, § 17.

**STOLEN NEGOTIABLE INSTRUMENTS.**

Rights of parties and holders. See Bills and Notes, §§ 3, 18, 20.  
Title acquired by bona fide purchaser of stolen bonds. See Bonds, § 1.

**STOPPAGE IN TRANSITS.**

By garnishment of carrier. See Garnishment, § 4.  
Right of seller and mode of exercising it. See Sales, § 17.

**STORAGE COMPANIES.**

Duties and liabilities of. See Warehousemen, §§ 1-6.

**STORE.**

As building subject to arson. See Arson, § 2.  
Theft from, as burglary. See Burglary, § 1.

**STOREHOUSE.**

See Warehousemen.

As building subject to arson. See Arson, § 2.  
Theft from as burglary. See Burglary, § 1.

**STORING EXPLOSIVES.**

Right to store explosives likely to injure adjoining owner. See Adjoining Land Owners, § 3.

**STRANGERS.**

See Third Persons.

Validity of accords by. See Accord and Satisfaction, § 6.  
Alterations by stranger to altered writing. See Alteration of Instruments, § 3.

**STRAYING ANIMALS.**

Estray laws. See Animals, § 4.

**STREAMS.**

Navigable. See Navigable Waters.  
Non-navigable. See Waters and Water-courses.

**STREET RAILROADS.**

MUNICIPAL REGULATION, § 1.

RIGHTS IN STREETS, § 2.

AS ADDITIONAL SERVITUDE, § 3.

Who are passengers on. See Carriers, § 39.

Duties and liabilities to passengers. See Carriers, § 41.

Care required to avoid injury from intersecting or fallen wires. See Electricity, § 1.

As additional servitudes. See Highways, § 5.

Duties and liabilities as employers. See Master and Servant.

Diligence required of street railroads to preserve human life. See Negligence, § 2.

**§ 1. Municipal Regulation.**

General effect of acceptance of franchise. 104: 637.

General nature of police power. 104: 638.

Right of municipality to regulate. 104: 638.

What constitutes regulation. 104: 640.

Must be reasonable. 104: 641.

Determination of reasonableness. 104: 642.

— Regulation requiring large outlay. 104: 644.

— Effect of express legislative authority. 104: 645.

— Who determines. 104: 645.

Regulations prohibiting carriage of freight, express or mail. 104: 646.

Regulating equipment of cars on track. 104: 646.

Regulating mode of operation. 104: 649-654.

Construction of ordinances regulating. 104: 654.

— Regulating equipment and operation. 104: 655.

Enforcement of ordinance making violation a predicate for negligence. 104: 656.

Criminal prosecution for violation of regulations. 104: 657.

**§ 2. Rights in Streets.**

Relative rights of pedestrians and ordinary vehicles. 25: 475.

Roadbed as public highway. 25: 476.



Nature of interest of company in street. 25: 476.  
 Right of way. 25: 477.  
 Right to use tracks of other companies. 25: 477.  
 Right to maintain switches and turnouts. 25: 478.  
 Elevated railways in streets. 25: 479.  
 Right to adopt new improvements. 25: 479.  
 Municipal regulation. 25: 479.  
 Duty to keep track in repair. 25: 480.  
 Duty to remove snow from tracks. 25: 480.  
 Duty to exercise care in operating cars. 25: 481.  
 Obligation to pave streets. 25: 481.

### § 3. As Additional Servitude.

In general. 106: 242.  
 Elevated roads. 106: 246.  
 Suburban roads. 106: 248.  
 Change of motive power. 106: 258.  
 Change from narrow to broad gauge. 106: 259.  
 Additional tracks. 106: 259.  
 Additional poles for light or power. 106: 260.  
 Poles and wires. 106: 260.  
 Subways. 106: 267.

### STREETS.

See, also, Highways; Private Roads.  
 Adverse possession of. See Adverse Possession, § 1, 2.  
 Dedication of. See Dedication, § 1.  
 Implied easements in. See Easements, § 6.  
 Electric poles and wires in. See Electricity, § 2.  
 Judicial notice of. See Evidence, § 3.  
 Grant by city of right to use streets for private purposes. See Municipal Corporations, § 22.  
 Rights of public and abutting owners. See Municipal Corporations, § 23.  
 Liability of abutting owners. See Municipal Corporations, § 24.  
 Obstructions by private persons. See Municipal Corporations, § 25.  
 What are additional servitudes on. See Municipal Corporations, § 26.  
 Liability for change of grade. See Municipal Corporations, § 27.  
 Vacating and discontinuing. See Municipal Corporations, § 28.  
 Injuries from defects in. See Municipal Corporations, §§ 34, 35.  
 Rights of street railroads in streets. See Street Railroads, § 2.

### STRIKES.

Liability of carrier for delay caused by. See Carriers, § 13.

Liability of carrier for injuries to passengers by strikers. See Carriers, § 45.  
 Extortion by threat to incite. See Extortion, § 2.  
 Labor strikes. See Trade Unions, § 1.

### STRIKING OUT.

Power of court to strike out answer stating valid defense. See Pleading, § 4.

### STUDENTS.

Domicile of. See Domicile, § 1.

### SUBAGENTS.

See Principal and Agent, § 2.

### SUBJACENT SUPPORT.

Assimilation to lateral support. See Adjoining Land Owners, § 1.  
 Right of surface owner to support of surface by mineral owner. See Mines and Minerals, §§ 7, 8.

### SUBJECT OF STATUTE.

Sufficiency of expression of subject in title. See Statutes, § 9.  
 When but one subject is expressed in title and what it may include. See Statutes, § 10.

### SUBLETTING.

See Landlord and Tenant, §§ 16-12.

### SUBMERGED LAND.

Title to. See Navigable Waters, § 5.

### SUBMISSION OF CONTROVERSY.

By agreement of parties to persons of their own choice. See Arbitration and Award.

### SUBPOENA.

Duces tecum. See Witnesses, § 3.  
 Service by reading over the telephone. See Telegraphs and Telephones, § 9.

### SUBROGATION.

IN GENERAL, § 1.  
 NATURE, ORIGIN AND KINDS, § 2.  
 PERSONS ENTITLED, § 3.  
 — PURCHASER AT JUDICIAL OR PUBLIC SALE, § 4.  
 — VOLUNTARY PAYMENTS AND VOLUNTEERS, § 5.  
 RIGHTS, SECURITIES AND PROPERTY INVOLVED, § 6.  
 CIRCUMSTANCES CONTROLLING, § 7.  
 PAYMENT AND DISCHARGE OF OBLIGATION, § 8.

Of sureties. See Principal and Surety, § 8.  
 Of life tenant on payment of claims against estate. See Life Estates, § 1.  
 Right of insurer to. See Insurance, §§ 44, 53.

#### § 1. In General.

Definitions and general principles. 44: 731.

Payment a prerequisite. 44: 736.  
 Volunteers not entitled to. 44: 736.

## § 2. Nature, Origin and Kinds.

Definition. 99: 476.  
 Origin, growth and expansion of doctrine. 99: 479.  
 Present status and liberality of doctrine. 99: 479.  
 Equitable basis and nature. 99: 478.  
 Kinds—Legal. 99: 477.  
 — Conventional. 99: 477.

## § 3. Persons Entitled.

By whom subrogations may be invoked. 99: 496.  
 To whose rights subrogation may be had. 99: 496.  
 Sureties on official bonds. 99: 497.  
 Sureties on bail bonds. 99: 497.  
 Persons voluntarily paying taxes 99: 498.  
 Against whom subrogation may be enforced. 99: 500.  
 Innocent third persons. 99: 501.  
 Persons having lien on two funds. 99: 502.  
 Grantee in fraudulent conveyance. 99: 503.  
 Insurer and insured. 99: 504.  
 Corporate officers, stockholders and creditors. 99: 504.  
 Principal and agent. 99: 505.  
 Officer paying judgment or execution. 99: 505.  
 Sureties on bonds. 99: 506, 509.  
 Guarantors. 99: 510.  
 Parties to bills and notes—Indorsers. 99: 510.  
 — Accommodation indorsers. 99: 511.  
 — Sureties and guarantors. 99: 511.  
 — Holders. 99: 511.  
 Persons paying or advancing money to discharge encumbrance—In general. 99: 511.  
 — Intention of parties. 99: 515.  
 — Knowledge of intervening lien. 99: 515.  
 — Mistake of law or fact. 99: 517.  
 — Misrepresentation and fraud. 99: 519.  
 — Agreement or understanding for security. 99: 519.  
 Junior encumbrancer paying senior lien. 99: 521.  
 Purchaser of encumbered property. 99: 524.  
 Person paying purchase money. 99: 527.

— Subrogation to vendor's lien. 99: 527.  
 Purchaser at judicial or execution sale. 99: 528.  
 Purchaser at foreclosure sale. 99: 529.  
 Purchaser at probate or tax sale. 99: 530.  
 Co-obligors and persons equally bound. 99: 531.  
 Life tenant paying claims against estate. 137: 661.

## § 4. — Purchaser at Judicial or Public Sale.

Judicial sales in general. 2: 328.  
 Execution sale. 2: 330.  
 Foreclosure sale. 2: 330.  
 Probate sale. 2: 330.  
 Right to retain possession until repaid. 2: 330.  
 Effect of fraud of purchaser. 2: 330.

## § 5. — Voluntary Payments and Volunteers.

Standing of volunteers. 99: 493.  
 Persons making advances and loans. 99: 495.  
 — To married women for necessities. 99: 496.

## § 6. Rights, Securities and Property Involved.

Rights and securities to which payer is entitled. 99: 485.  
 Primaries and original security. 99: 487.  
 Priority over other claims. 99: 488.  
 Protection of property—Estate involved. 99: 488.  
 Homesteads. 99: 489.  
 Estates of decedents—Widow. 99: 491.  
 — Devisees and legatees. 99: 492.  
 — Executors and administrators. 99: 492.

## § 7. Circumstances Controlling.

Principles of equity. 99: 480.  
 Intervening rights and equities. 99: 480.  
 Solvency of debtor. 99: 481.  
 Usury. 99: 481.  
 Laches and negligence. 99: 482.

## § 8. Payment and Discharge of Obligation.

Necessity for payment. 99: 482.  
 Sufficiency—Part payment. 99: 483.  
 Money payment essential. 99: 484.

**SUBSCRIBING WILL.**

Subscription to will. See Wills, § 5.  
 Subscribing witness to will. See Wills, § 6.

**SUBSCRIPTIONS.**

To corporate stock. See Corporations, § 12.

**SUBSTANTIAL PERFORMANCE.**

Of building contract. See Contracts, § 22.  
 Quantum meruit on substantial performance of building contract. See Work and Labor, § 1.

**SUBSTITUTION.**

Of personal representatives on death of party pending suit. See Abatement and Revival, § 4.  
 Of one defendant for another. See Interpleader, § 5.

**SUBSURFACE.**

Possession of surface as adverse possession of severed mineral estate. See Adverse Possession, § 12.

**SUBTERRANEAN WATERS.**

Percolating and nonpercolating. See Waters and Watercourses, § 9.  
 Land owner's rights in. See Waters and Watercourses, § 10.

**SUBURBAN RAILROADS.**

As additional servitudes. See Railroads, § 3;  
 Street Railroads, § 3.

**SUBWAYS.**

As additional servitudes. See Street Railroads, § 3.

**SUCCESSION OF ESTATES.**

Of intestates. See Descent, § 1.

**SUCCESSIVE ACTIONS.**

For nuisance. See Nuisance, § 5.

**SUDDEN JOLTS.**

Injuries to passengers from. See Carriers, § 41.

**SUFFRAGE.**

See Elections.

**SUGAR.**

As necessary of life. See Monopolies, § 1.

**SUICIDE.**

As avoiding certificate of membership in mutual aid society. See Beneficial Associations, § 5.  
 May be declared a crime. See Criminal Law, § 1.  
 Attempt to commit. See Criminal Law, § 4.

Killing in attempting suicide as homicide. See Homicide, § 10.

As avoiding insurance policy. See Insurance, § 22.

Liability of liquor seller for suicide of drunkard. See Intoxicating Liquors, § 2.

**§ 1. As a Crime.**

At common law. 78: 264.

**SUMMARY JURISDICTION.**

Over attorneys. See Attorney and Client, § 1.

**SUMMARY PROCEEDINGS.**

To discover and recover property of estates of decedents. See Executors and Administrators, § 13.

By vendor on default of purchaser of land. See Vendor and Purchaser, § 8.

**SUMMONING JURORS.**

Grand jurors. See Grand Jury, § 1.

**SUMMONS.**

In civil actions. See Process, §§ 1-8.

**SUNDAY.**

Power to declare violations of sundry laws criminal. See Criminal Law, § 1.

Exclusion of Sunday in computing time. See Time, § 1.

**§ 1. In General.**

Validity of statute prohibiting theatrical performance on Sunday. 110: 526.

Person violating Sunday law can be guilty of but one offense for several acts done on same day. 131: 815-817.

**SUPERINTENDENT.**

Right to mechanic's lien. See Mechanics' Liens, § 2.

**SUPERSEDEAS.**

§ 1. Implied Power to Issue Writ of. Definition of supersedeas. 67: 714.

Inherent power of court. 67: 715.

Injunctions—Extending stay until hearing. 67: 717.

When supersedeas should issue. 67: 719.

**SUPERSTITIONS.**

As insane delusions. See Insane Persons, § 1.

**SUPERVISORS.**

Records of meetings of city council. See Municipal Corporations, § 7.

Liabilities of sureties of. See Municipal Corporations, § 11.

**SUPPORT.**

Obligation of child to support parent and proceedings to enforce it. See Parent and Child, § 3.  
Of party-walls. See Party-walls, § 1.

**SUPPORT OF CHILDREN.**

Children of divorced parents. See Divorce, § 12.

**SUPPORT OF GRANTOR.**

Deeds for. See Deeds, §§ 11, 12.  
Deed for support of grantor as mortgage. See Mortgages, § 6.

**SUPPORT OF SOIL.**

General right to. See Adjoining Land Owners, § 1; Party-walls, § 1.

**SUPPORT OF SURFACE.**

Duty of mine operator to support surface. See Mines and Minerals, §§ 7, 8.

**SUPPRESSION OF TRUTH.**

As false representation. See Fraud, § 3.

**SURFACE.**

Possession of surface as adverse possession of severed mineral. See Adverse Possession, § 12.  
Rights of owner of minerals as against owner of surface. See Mines and Minerals, § 7.

**SURFACE DISCOVERY.**

Of mineral float and outcropping. See Mines and Minerals, § 2.

**SURFACE SERVITUDES.**

What are. See Municipal Corporations, § 26.

**SURFACE WATER.**

Prescriptive title to. See Waters and Water-courses, § 2.

**SURGEONS.**

See Physicians and Surgeons.

**SURGICAL INSTRUMENTS.**

As baggage. See Carriers, § 58.

**SURROGATE COURTS.**

Authority to punish contempt. See Contempts, § 4.

**SURVEYS.**

Controlling effect of calls for. See Boundaries, § 4.  
Judicial notice of. See Evidence, § 3.

**SURVIVAL OF ACTION.**

On death of party. See Abatement and Revival, § 4.

**SURVIVING PARTNER.**

Right to compensation for winding up affairs. See Partnership, § 20.

**SURVIVORSHIP.**

Of cause of action. See Abatement and Revival, § 4.  
Presumption of survivorship of persons perishing in common disaster. See Death, § 2.

**SUSPENSION.**

Of attorneys. See Attorney and Client, §§ 1-4.  
Of writ of habeas corpus during rebellion. See Habeas Corpus, § 1.  
Of writ of habeas corpus during riot. See Riot, § 1.  
Of school pupil. See Schools and School Districts, § 5.

**SUSPICION.**

Right to arrest on suspicion without warrant. See Arrest, § 1.

**SWAPPING.**

See Exchange of Property.

**SWELLS.**

Duty of large vessels to avoid imperiling small boats by. See Collision, § 2.

**SWINDLING.**

See False Pretenses.

**SWINE.**

See Animals.

**SWITCHMEN.**

As vice-principals. See Master and Servant, § 19.

**SWITCH TRACKS.**

Railroad switches as additional servitudes. See Railroads, § 3.  
Right of street railroads to maintain. See Street Railroads, § 2.

**SYMBOLS.**

As trademarks. See Trademarks and Trade Names, § 2.

**SYPHILIS.**

See Venereal Disease.

**TAILORS.**

Tools exempt from execution. See Exemptions, § 7.

**TAKING.**

What constitutes taking for public use and necessity for taking. See Eminent Domain, §§ 5, 6.  
As element of larceny. See Larceny, § 5.  
As element of robbery. See Robbery, § 3.

**TAKING ACKNOWLEDGMENT.**

See Acknowledgment, § 5.

**TALESMEN.**

See Grand Jury, § 1.

**TAXATION.**

IN GENERAL, § 1.

WHAT IMPOSITIONS ARE SUSTAINED AS EXERCISE OF TAXING POWER, § 2.

PURPOSES FOR WHICH TAXES MAY BE IMPOSED, § 3.

PURPOSES FOR WHICH TAXES MAY NOT BE IMPOSED, § 4.

UNIFORMITY AND EQUALITY, § 5.

PROPERTY SUBJECT—PUBLIC PROPERTY, § 6.

— INTERSTATE CONSOLIDATED CORPORATION, § 7.

— FRANCHISES, § 8.

— PATENT RIGHTS AND PATENTED ARTICLES, § 9.

STATE TAXATION OF NATIONAL BANKS, § 10.

EXEMPTIONS, § 11.

— LANDS OWNED BY GOVERNMENTAL BODIES OR IN WHICH THEY HAVE AN INTEREST, § 12.

SITUS OF PERSONAL PROPERTY, § 13.

LIABILITY OF SURETIES ON BOND OF COLLECTOR, § 14.

WHO MAY PURCHASE AND ENFORCE TAX TITLE, § 15.

RECOVERY OF PERSONAL JUDGMENT FOR TAXES, § 16.

RECOVERY OF TAXES PAID, § 17.

RECOVERY OF MONEY PAID AT VOID TAX SALE, § 18.

TAX DEEDS, § 19.

— POWER OF LEGISLATURE TO MAKE DEEDS CONCLUSIVE, § 20.

COLLATERAL INHERITANCE AND TRANSFER TAX, § 21.

— NATURE, BASIS AND EXTENT OF TAX, § 22.

— VALIDITY AND CONSTITUTIONALITY, § 23.

— CONSTRUCTION OF INHERITANCE TAX LAWS, § 24.

— ESTATES SUBJECT TO TAX, § 25.

— PROPERTY AND TRANSFERS SUBJECT TO TAXATION, § 26.

— TRANSFERS IN CONTEMPLATION OF OR TO TAKE EFFECT AFTER, DEATH, § 26½.

— SITUS OF PROPERTY FOR TAXATION, § 27.

See, also, Commerce; Internal Revenue; Licenses.

Failure to pay taxes as evidence of abandonment. See Abandonment, § 3.

Tax proceedings against unknown owners. See Absentees, § 2.

Tax deed or certificate as color of title. See Adverse Possession, § 10.

Review of assessment or equalization on certiorari. See Certiorari, § 3.

Of subjects of commerce. See Commerce, § 1.

Tax proceedings as due process of law. See Constitutional Law, § 23.

Of interstate consolidated corporation. See Corporations, § 61.

Liability of dowager for taxes. See Dowry, § 1.

Liability of homestead for taxes. See Homestead, § 3.

Revenue stamps. See Internal Revenue, § 1.

Occupation taxes. See Licenses, §§ 1-5.

Duty of life tenant to pay taxes. See Life Estate, §§ 3, 4.

Mandamus to compel levy or assessment of tax. See Mandamus, § 4.

Assessments for local improvements. See Municipal Corporations, §§ 16-20.

Right to recover taxes paid. See Payment, § 3.

Tax title as marketable title. See Vendor and Purchaser, § 6.

**§ 1. In General.**

What constitutes a tax. 8: 506, 507.

Double taxation of franchises. 131: 874.

Value of franchise as basis of taxation. 131: 876.

**§ 2. What Impositions are Sustained as Exercises of Taxing Power.**

Power of legislature to impose tax. 8: 508.

Tax of offices, profits and occupations. 8: 508.

Tax on citizens and foreign corporations. 8: 508.

Tax on transmission of estates by devise or descent. 8: 508.

Assessment of whole cost of improvement on property benefited. 8: 509.

Uniformity and equality. 8: 510.

Purpose must be public. 8: 511.

**§ 3. Purposes for Which Taxes may be Imposed.**

Public purposes only. 16: 365, 366.

What constitutes a public purpose. 16: 367.

Public charities. 16: 368.

Educational institutions. 16: 368.

Preservation of public health. 16: 368.

Construction of levees. 16: 368.

Public highways. 16: 368.

Public parks. 16: 369.

Public buildings. 16: 369.

Municipal gas and water works. 16: 369.

Bounties. 16: 369.

Discharge of moral or equitable obligation. 16: 369.

Gristmill. 16: 370.

Library for supreme court. 16: 370.

Lobbying. 16: 371.

Local improvements. 16: 371.

**§ 4. Purposes for Which Taxes may not be Imposed.**

Private business enterprises. 16: 370.  
 Private drains. 16: 370.  
 Public defense. 16: 370.  
 Private schools. 16: 370.  
 Private dams. 16: 370.  
 Private loans. 16: 370.  
 Public celebrations. 16: 371.  
 Lobbying. 16: 371.

**§ 5. Uniformity and Equality.**

Of franchise tax. 131: 876.

**§ 6. Property Subject—Public Property.**

Taxation for revenue. 33: 400.  
 Property of United States. 33: 401.  
 Property of state. 33: 403.  
 Mortgages held by state school fund. 33: 404.  
 Municipal property. 33: 404.

**§ 7. — Interstate Consolidated Corporation.**

Taxable in each state. 89: 652.  
 Taxation of capital stock and shares. 89: 653.  
 Taxation for privilege of consolidation. 89: 654.  
 Classification of corporations for taxation or assessment. 62: 175.

**§ 8. — Franchises.**

Taxability. 131: 867–873.  
 Constitutional limitations. 131: 874–878.  
 Franchises subject to taxation. 131: 879.  
 — Franchises granted by the federal government. 131: 880.  
 — Banking franchises. 131: 882.  
 — Franchises of foreign corporations. 131: 883.

**§ 9. — Patent Rights and Patented Articles.**

Patent rights. 37: 747.  
 Patented articles. 37: 750.

**§ 10. State Taxation of National Banks.**

Review of federal statutes. 69: 38.  
 Banks as agencies of federal government. 69: 39.  
 Real and personal property. 69: 40.  
 Surplus funds. 69: 41.

Capital stock and shares. 69: 42.  
 Banks as agents for collection of taxes from stockholders. 69: 44.  
 Effect of investment of funds in federal bonds or other untaxable securities. 69: 45.  
 Discrimination against—Moneyed capital. 69: 46.  
 — Rates and systems of taxation, deductions. 69: 49, 50.  
 Valuation and situs of shares. 69: 51.

**§ 11. Exemptions.**

Nature of right to be exempt from taxation. 132: 292.

**§ 12. — Lands Owned by Governmental Bodies or in Which They have an Interest.**

General rules exempting lands owned by public. 132: 294.  
 Governmental bodies to which rule applies. 132: 296.  
 Exemption from special taxes and assessments. 132: 299.  
 Exemption dependent on use made of land. 132: 317.  
 Exemption of municipally conducted public service corporations. 132: 326.  
 Land of governmental body outside its boundaries. 132: 328.  
 Exemption depending upon character or condition of title of the public in the lands. 132: 330–348.  
 Effect of tax deeds to land belonging to the public. 132: 349.

**§ 13. Situs of Personal Property.**

In general. 62: 448.  
 A legislative question. 62: 450.  
 Domicile of owner. 62: 451, 452.  
 Choses in action. 62: 452.  
 Bonds. 62: 452.  
 Collateral inheritances. 62: 454.  
 Debts and credits. 62: 455.  
 Judgment and mortgages. 62: 457.  
 Negotiable instruments. 62: 458.  
 Corporate stock and shares. 62: 458, 468.  
 Property within the state. 62: 459.  
 Property in cities, counties and towns. 62: 461.  
 Property employed in trade. 62: 463.  
 Horses and cattle. 62: 465.  
 Partnership property. 62: 465.  
 Infant's property. 62: 466.

Trust property. 62: 466.  
 Decedent's property. 62: 466.  
 Corporate property. 62: 468.  
 National bank property and stock. 62: 469.  
 Railroad property and rolling stock. 62: 470.  
 Vessels. 62: 471.  
 Imported goods. 62: 473.  
 Property employed in interstate commerce. 62: 474.  
 Property in transit or not permanently located. 62: 475.

#### § 14. Liability of Sureties on Bond of Collector.

Failure to collect. 91: 552.  
 Seizure of exempt property. 91: 552.  
 Retention of proceeds of collection. 91: 553.  
 — Tax irregularly levied or collected. 91: 553.  
 — Tax law unconstitutional. 91: 554.  
 As ex-officio treasurer. 91: 555.

#### § 15. Who may Purchase and Enforce Tax Title.

General principles. 75: 229.  
 Purchaser at administrator's sale. 75: 231.  
 Adverse claimants. 75: 231.  
 Agents. 75: 231.  
 Attorney. 75: 233.  
 City, county or state. 75: 234.  
 Tenants in common. 75: 235.  
 Guardian, heir or spouse. 75: 240.  
 Tenants. 75: 241.  
 Licensees, lienholders and mortgagees. 75: 242, 243.  
 Mortgagors, officers or partners. 75: 245, 247.  
 Owners. 75: 248.  
 Persons in possession. 75: 249.  
 Persons out of possession. 75: 251.  
 Persons bound by contract to pay taxes. 75: 251.  
 Tenants at sufferance. 75: 252.  
 Trustees. 75: 253.  
 Vendors or purchasers. 75: 253.

#### § 16. Recovery of Personal Judgment for Taxes.

In cases of collection of ordinary taxes by suit. 42: 655.  
 — Suit for balance. 42: 656.  
 — Taxes assessed against one not owner. 42: 657.

Index-Digest—22

— Validity and conclusiveness of judgment. 42: 657.  
 — Effect of failure to provide remedy. 42: 658.  
 — Special remedy provided is not exclusive. 42: 658.  
 In cases of special assessments—Distinction between assessments and taxes. 42: 659.  
 — Personal liability for assessments. 42: 659.

#### § 17. Recovery of Taxes Paid.

Voluntary payments. 94: 425.  
 Involuntary payments. 94: 426.  
 Distinction between tax and other payments. 94: 427.  
 Prerequisites to recovery. 94: 428.  
 Time of compulsion. 94: 428.  
 Duress of goods. 94: 429.  
 Duress of lands—To prevent sale. 94: 430.  
 — To record deed. 94: 432.  
 — To facilitate sale. 94: 432.  
 — To redeem from sale. 94: 433.  
 Effect of abandonment of object. 94: 433.  
 City taxes and assessments. 94: 434.  
 License taxes and fees. 94: 437.  
 Statutes authorizing recovery of taxes paid—General scope and effect. 94: 439.  
 — Necessity and sufficiency of protest. 94: 442.  
 — Demand for return.

#### § 18. Recovery of Money Paid at Void Tax Sale.

Caveat emptor applies. 42: 588.  
 Liability of city or county to refund. 42: 588.  
 Statutes authorizing recovery. 42: 590, 591.  
 Agreement of county to refund if sale proves invalid. 42: 591.

#### § 19. Tax Deeds.

Effect of recitals in. 31: 233.  
 Force and effect of tax deeds to land belonging to the public. 132: 349.

#### § 20. — Power of Legislature to Make Deeds Conclusive.

Denial of power. 4: 187.  
 Deed may be made prima facie evidence. 4: 188.

Deed is not prima facie evidence in absence of statute. 4: 189.  
 Law making deed prima facie evidence is not retroactive. 4: 189.

**§ 21. Collateral Inheritance and Transfer Tax.**

Constitutionality of tax laws. 41: 580.  
 Persons affected. 41: 582.  
 Property affected. 41: 583.  
 Real estate situated out of the state. 41: 584.

**§ 22. — Nature, Basis and Extent of Tax.**

Meaning of inheritance tax. 127: 1036.  
 Nature of inheritance tax. 127: 1036.  
 Basis of right to impose tax. 127: 1037.  
 Origin and extent of taxation. 127: 1041.  
 Important features of taxation. 127: 1042.

**§ 23. — Validity and Constitutionality.**

Constitutionality in general. 127: 1042.  
 — Federal tax. 127: 1043.  
 — Municipal ordinance. 127: 1044.  
 Unconstitutionality of certain statutes. 127: 1044.  
 Uniformity and equality. 127: 1045.  
 Discrimination between relatives. 127: 1048.  
 Discrimination against nonresidents. 127: 1050.  
 Exemption of estates of limited. 127: 1050.  
 Exemption of charities. 127: 1051.  
 Progressive rate of taxation. 127: 1051.

**§ 24. — Construction of Inheritance Tax Laws.**

Strict or liberal construction. 127: 1052.  
 Retrospective operation. 127: 1053.  
 Law governing estates in remainder. 127: 1055.  
 Law governing powers of appointment. 127: 1055.  
 Amendatory acts. 127: 1056.  
 Curative acts. 127: 1057.  
 Repeal and re-enactment of statute. 127: 1057.

**§ 25. — Estates Subject to Tax.**

Life estates and vested remainders. 127: 1076.  
 Future contingent estates—New York. 127: 1079.  
 — California. 127: 1079.  
 — Minnesota. 127: 1080.  
 — Other states. 127: 1081.  
 — Federal rule. 127: 1082.

**§ 26. — Property and Transfers Subject to Taxation.**

In general. 127: 1059.  
 Exemption of certain property and transfers. 127: 1058.  
 Increase or income of estate after death. 127: 1060.  
 Real or personal property. 127: 1061.  
 Property affected by equitable conversion. 127: 1061.  
 Estate of surviving wife. 127: 1063.  
 Articles exempt to widow and children. 127: 1064.  
 Deposits in bank. 127: 1064.  
 Corporate stock and bonds. 127: 1064.  
 Government bonds and securities. 127: 1065.  
 Legacy to United States. 127: 1066.  
 Life insurance. 127: 1066.  
 Membership in stock exchange. 127: 1067.  
 Goodwill of business. 127: 1068.  
 Interest in partnership property. 127: 1068.  
 Bequests for funeral expenses. 127: 1069.  
 Bequests in discharge of debt. 127: 1069.  
 Advancements. 127: 1071.  
 Compensation to executor or trustee. 127: 1071.  
 Power of appointment. 127: 1071.  
 Effect of compromise of litigation. 127: 1073.  
 Effect of renunciation of legacy. 127: 1075.

**§ 26½. — Transfers in Contemplation of, or to Take Effect After, Death.**

Validity of law imposing tax. 127: 1083.  
 Purposes of statute. 127: 1083.  
 Transfers in contemplation of death. 127: 1084.  
 Transfers to take effect after death. 127: 1085.  
 Transfers for a consideration. 127: 1087.



Marriage settlements. 127: 1087.  
 Agreements to make a will. 127: 1088.

**§ 27. — Situs of Property for Taxation.**

In general. 127: 1088.  
 Real estate. 127: 1088.  
 Personal property. 127: 1089-1092.  
 Money and bank deposits. 127: 1092.  
 Debts due nonresident. 127: 1094.  
 Notes, papers and securities. 127: 1094.  
 Secured notes. 127: 1095.  
 Corporate bonds. 127: 1905.  
 Stock in domestic corporations. 127: 1096.  
 Stock in corporations organized in two states. 127: 1099.  
 Stock in foreign corporations. 127: 1100.

**TAXPAYERS.**

Remedies for waste or misapplication of public funds or other acts of city officers. See Municipal Corporations, § 14.

**TAX TITLE.**

As marketable title. See Vendor and Purchaser, § 6.

**TEACHERS.**

Right to exemptions as laborers. See Exemptions, § 3.  
 Imputing negligence of pupil to child. See Negligence, § 14.  
 Powers and liabilities of. See Schools and School Districts, § 1.  
 Right to employ sectarian teachers in public schools. See Schools and School Districts, § 4.

**TEAMSTERS.**

Right to exemptions as laborers. See Exemptions, § 3.  
 Right to mechanic's lien. See Mechanics' Liens, § 2.

**TEARING WILL.**

As revocation. See Wills, § 18.

**TELEGRAPHS AND TELEPHONES.**

**POLES AND WIRES IN STREETS AND HIGHWAYS AND ACROSS PRIVATE PROPERTY, § 1.**  
**DUTY TO FIND ADDRESSEE, § 2.**  
**EFFECT OF STIPULATION IN BLANK MESSAGE ON RIGHTS OF ADDRESSEE, § 3.**  
**ELEMENTS OF DAMAGE FOR FAILURE TO SEND OR DELIVER, § 4.**  
**SAME, § 5.**  
 — NOTICE OR KNOWLEDGE OF CIRCUMSTANCES, § 6.  
 — MENTAL ANGUISH, § 7.  
**LAW OF THE TELEPHONE, § 8.**  
**USE OF TELEPHONE IN LEGAL PROCEEDINGS, § 9.**

Validity of acknowledgment taken over the telephone. See Acknowledgment, § 1.  
 Contracts by telegraph or telephone. See Contracts, §§ 5, 6.  
 Telegrams as evidence. See Evidence, § 4.  
 Telephone conversation as evidence. See Evidence, § 10.  
 Wires and poles in streets as additional servitude. See Municipal Corporations, § 26.

**§ 1. Poles and Wires in Streets and Highways and Across Private Property.**

Erected without authority. 28: 229.  
 Legislative power to authorize use of highways. 28: 229.  
 — Without compensation to abutting owner. 28: 229-233.  
 Are not additional servitude. 28: 235.  
 Invasion of private property may be enjoined. 28: 235.

**§ 2. Duty to Find Addressee.**

Diligence required. 27: 923.  
 Failure of definite address. 27: 924.  
 Unrepeated message. 27: 924.  
 Free delivery limits. 27: 924.  
 Delivery to another person for addressee. 27: 925.  
 Burden of proof. 27: 925.  
 Insufficient service no excuse. 27: 925.  
 Diligence as question of fact. 27: 925.

**§ 3. Effect of Stipulation in Blank Message on Rights of Addressee.**

Contract relations. 61: 214.  
 Actions in tort. 61: 217.

**§ 4. Elements of Damage for Failure to Send or Deliver.**

Recovery is for breach of contract. 10: 778.  
 Damages which are not the natural and proximate result. 10: 779.  
 Actual damages resulting from failure, delay or error. 10: 782.  
 Knowledge of importance of message as affecting damages. 10: 785.  
 When message discloses its importance. 10: 786.  
 Mental anguish or injury to feelings. 10: 788.  
 Penalty recoverable regardless of damages. 10: 790.

**§ 5. Same.**

Damages in contemplation of parties. 117: 288.

Notice or knowledge of circumstances. 117: 289.  
 Remote, contingent or speculative. 117: 293.  
 Injury to credit. 117: 295.  
 Loss of expected profits. 117: 295.  
 Loss of employment. 117: 296.  
 Loss of professional fees. 117: 296.  
 Loss of services. 117: 296.  
 Losses which could have been prevented. 117: 297.  
 Failure to transmit money. 117: 298.  
 Mistake in transmission. 117: 298.  
 Messages relating to gambling transactions. 117: 300.  
 Forged or fraudulent messages. 117: 300.  
 Immoral, indecent or libelous messages. 117: 300.

#### § 6. Notice or Knowledge of Circumstances.

Necessity. 117: 289.  
 Importance apparent on face of message. 117: 290.  
 Extraneous evidence of nature of message. 117: 291.  
 Cipher messages. 117: 291.

#### § 7. — Mental Anguish.

In general. 117: 301.  
 Messages relating to sickness. 117: 305.  
 — Relationship of parties. 117: 315.  
 — Notice or knowledge as affecting right. 117: 316.  
 — Messages summoning physician. 117: 319.  
 — Remote, contingent and speculative damages. 117: 319.  
 — Exemplary damages. 117: 322.  
 — Law governing interstate messages. 117: 323.  
 Right to damages for mental suffering caused by delay in delivery of telegram. 66: 873.

#### § 8. Law of the Telephone.

Assimilation to law of telegraph. 10: 128.  
 Distinction between telephone and telegraph business. 10: 129.  
 Power of telephone company to make rules. 10: 130.  
 Telephone company as common carrier. 10: 130.  
 Right to use public highway. 10: 130.

Right to use city streets. 10: 131.  
 Duties of telephone company to the public. 10: 131.  
 Duty to serve everybody equally. 10: 131, 132.  
 Regulation of charges. 10: 134.  
 Legal effect of telephone conversations. 10: 135.  
 Telephone conversation as evidence. 10: 135.

#### § 9. Use of Telephone in Legal Proceedings.

Giving notices and taking acknowledgments. 127: 554.  
 Obtaining information to be used as the basis of an affidavit or for discharge of jury. 127: 556.  
 Serving subpoena by reading it over the telephone. 127: 556.  
 Law of the telephone as applied to contracts and evidence. 127: 538–554.

### TELEPHONES.

Validity of acknowledgment taken over telephone. See Acknowledgment, § 1.  
 Affidavits based on information communicated to affiant over the telephone. See Affidavits, § 1.  
 Contracts by telephone. See Contracts, § 6.  
 Telephone conversation as evidence. See Evidence, § 10.  
 Validity of legal notice by telephone. See Notice, § 1.  
 Law of the telephone. See Telegraphs and Telephones, § 8.

### TEMPORARY STAY.

Of execution. See Execution, § 4.

### TENANCY AT WILL.

Creation of. See Landlord and Tenant.

### TENANCY IN COMMON.

CREATION OF RELATION, § 1.  
 RIGHT OF ONE TENANT TO CONVEY, § 2.  
 CONVEYANCE OF SPECIFIC PART BY ONE TENANT, § 3.  
 RIGHT OF COTENANT TO ACQUIRE AND ENFORCE TAX TITLE, § 4.  
 LIEN OF ONE COTENANT ON MOIETY OF ANOTHER, § 5.  
 LIABILITY FOR RENTS, PROFITS AND IMPROVEMENTS, § 6.  
 ACTION FOR POSSESSION OF PROPERTY, § 7.  
 COTENANCY IN CHATTELS, § 8.  
 Adverse possession by tenants in common. See Adverse Possession, § 4.  
 Cotenancy in mines. See Mines and Minerals, §§ 11–18.  
 Part owners of vessels as tenants in common. See Shipping, § 1.

**§ 1. Creation of Relation.**

By confusion of goods. 101: 917.  
By cropper's contract. 98: 959-962.

**§ 2. Right of One Tenant to Convey.**

Grant of easement. 21: 593, 594.  
Grant of individual interest by metes and bounds. 21: 594.

**§ 3. Conveyance of Specific Part by One Tenant.**

Validity of conveyance. 100: 649.  
Assent by cotenant. 100: 651.  
Effect as against grantor—As estoppel. 100: 651.  
— What interest passes. 100: 652.  
Effect on purchaser—In general. 100: 652.  
— Rights of cotenant. 100: 652.  
— Partition and rights thereunder. 100: 653.

**§ 4. Right of Cotenant to Acquire and Enforce Tax Title.**

Rule denying the right. 116: 367.  
Reason for the rule. 116: 368.  
Time of accrual of tax and acquisition of title. 116: 369.  
Possession of property by cotenants. 116: 369.  
Holding title under different instruments. 116: 370.  
Different kinds of cotenants. 116: 371.  
Cotenants of estate in remainder. 116: 371.  
Husband of cotenant. 116: 371.  
Grantee of cotenant. 116: 372.  
Right of purchasing tenant to contribution. 116: 372.

**§ 5. Lien on One Cotenant on Moiety of Another.**

Right of tenant to contribution. 35: 416.  
In absence of agreement. 35: 417.  
Under express contract. 35: 418.  
Tenant paying more than his share of purchase price. 35: 419.  
Tenant discharging encumbrance. 35: 419.  
Tenant purchasing adverse title. 35: 420.  
Equitable lien on partition. 35: 421.

**§ 6. Liability for Rents, Profits and Improvements.**

Common-law rule. 52: 924.  
Statute of Anne. 52: 924.

For rents received. 52: 925.

For use and occupation, no rents being received. 52: 925.

Reason of the rule. 52: 927.

During exclusion or adverse holding. 52: 928.

Cases maintaining liability for use and occupation. 52: 929.

Rule governing mines. 52: 933.

Offsets. 52: 933.

Repairs. 52: 934.

Improvements. 52: 935-941.

**§ 7. Action for Possession of Property.**

Possessory rights of tenants in common. 50: 839.

Personal property. 50: 840.

Real property. 50: 841.

Forcible entry and detainer. 50: 843.

— By one tenant against another. 50: 845.

Ejectment by one tenant against another. 50: 843.

Necessity for ouster. 50: 843, 844.

Title or interest of plaintiff. 50: 845.

Trespass to try title. 50: 846.

**§ 8. Cotenancy in Chattels.**

Sale by one tenant. 16: 660.

Destruction of property by tenant. 16: 661.

Possession of one as possession of all. 16: 661.

**TENANTS.**

See Landlord and Tenant.

Tenant as head of family within meaning of homestead law. See Homestead, § 1.

**TENDER.**

Effect of tender of satisfaction as complete accord. See Accord and Satisfaction, § 4.

Taking sale out of operation of statute of frauds. See Frauds, Statute of, § 7.

Under option to purchase land. See Vendor and Purchaser, § 3.

**TENPINS.**

As gambling game. See Gaming, § 4.

**TERM.**

Vacating judgment after term. See Judgment, § 15.

**TERMINATION.**

Of lis pendens. See Lis Pendens, § 1.

Of malicious prosecution. See Malicious Prosecution, §§ 1, 2.

Of trust and of trustee's title. See Trusts, § 14.

Of liability of warehousemen. See Warehousemen, § 4.

**TESTAMENTARY CAPACITY.**

To make nuncupative will. See Wills, § 10.  
 Nature and essentials. See Wills, § 11.

**TESTAMENTARY GUARDIANS.**

See Guardian and Ward, § 2.

**TESTAMENTARY LETTERS.**

See Executors and Administrators; Wills.

**TESTAMENTARY WRITING.**

What constitutes. See Wills, § 2.

**THEATERS AND SHOWS.**

Exclusion of negroes from. See Civil Rights, § 1.  
 Validity of statute prohibiting performances on Sunday. See Sunday, § 1.

**§ 1. General Note.**

Power to regulate. 110: 526.

Power to license. 110: 527.

Performances for which license may be required. 110: 528.

License includes what shows. 110: 530.

Rights connected with tickets or admission. 110: 530.

Speculators' tickets. 110: 532. 532

Care required of proprietor or manager. 110: 532.

Obstructing aisles or passageways. 110: 534.

Civil rights. 110: 535.

Contracts of actors or performers. 110: 537.

**THEFT.**

See Burglary; Larceny; Robbery.

**THIEF.**

Alteration of instrument by. See Alteration of Instruments, § 3.

**THIRD PERSONS.**

Validity of accords by. See Accord and Satisfaction, § 6.

Materiality of alteration of writing by person not a party to it. See Alteration of Instruments, § 3.

Liability of carrier for injury to passenger by third persons. See Carriers, § 44.

Rights of chattel mortgagee against third persons. See Chattel Mortgages, § 13.

Contracts for benefit of. See Contracts, § 4½.  
 Confessions of, as evidence. See Criminal Law, § 31.

False representations intended to be communicated to, as fraud. See Fraud, § 3.

Injury to hotel guest by. See Innkeepers, § 3.

Liability of landlord for injury to third persons from dangerous premises. See Landlord and Tenant, § 29.

Master's liability for injuries to. See Master and Servant, § 31.

Manufacturer's liability to third persons for negligence. See Negligence, § 9.

Liability of principal to third persons for acts of agent. See Principal and Agent, § 16.

Effect of defective records on rights of. See Records, § 3.

Rights and liabilities of part owners of vessels as to third persons. See Shipping, § 3.

**THREATS.**

Extortion by. See Extortion, § 2.

Evidence of threats in homicide cases. See Homicide, §§ 18-21.

Offense of mailing threatening letters. See Postoffices, § 3.

Coercing verdict by. See Trial, § 6.

**TICKET AGENTS.**

Liability of carriers for negligence or misrepresentations of. See Carriers, § 33.

**TICKETS.**

Passenger tickets. See Carriers, § 34.

Power to declare ticket scalping a crime. See Criminal Law, § 1.

Theater tickets. See Theaters and Shows, § 1.

**TIMBER.**

Estovers. See Landlord and Tenant, § 33.

Right to replevin timber converted into lumber. See Replevin, § 2.

Penalties and damages for cutting, removing or injuring. See Woods and Forests, § 1.

**TIMBER DEEDS.**

See Deeds, § 15.

**TIME.**

See, also, Adverse Possession; Limitation of Actions.

To make satisfaction in execution of accord agreement. See Accord and Satisfaction, § 4.

Of making of alteration as affecting its materiality. See Alteration of Instruments, § 4.

Of trial of criminal case. See Criminal Law, § 41.

Judicial notice of time, days, and dates. See Evidence, § 1.

To apply payments made. See Payment, § 12.

Presumption of payment from lapse of time. See Payment, § 1.

To appoint receiver. See Receivers, § 1.

As essence of contract to purchase land. See Vendor and Purchaser, § 1.

**§ 1. Computation of Time.**

Exclusion of first day. 78: 372.

Exclusion of first and last day. 78: 375.

Exclusion of either first or last day. 78: 376.

Exclusion of Sunday. 78: 377.

Exclusion of holidays. 78: 380.

Fractions of a day. 78: 370.

Year. 78: 384.

Month. 78: 384.

Day. 78: 385.

Week. 78: 385.

Solar and standard time. 78: 386.

"Until," "within," "before," "to" and "forthwith" defined. 78: 386.

### TITLE.

Abstracts of title and liability of abstractors for want of care or skill. See Abstracts of Title, § 1.

Acquisition of title by adverse possession. See Adverse Possession, § 10.

Breach of warranty of title. See Covenants, §§ 7, 9.

Acquired by purchase at execution sale. See Execution, § 10.

Of factor. See Factors, § 2.

To goods consigned to factors. See Factors, § 2.

Of leased premises as affecting lease. See Landlord and Tenant, § 2.

Who may purchase and enforce tax title. See Taxation, § 15.

What constitutes a marketable title. See Vendor and Purchaser, § 6.

### TITLE OF STATUTE.

Sufficiency of. See Statutes, § 9.

When title embraces one subject and what it may include. See Statutes, § 10.

### TONNAGE DUTIES.

Power of state to impose. See Commerce, § 1.

### TOOLS.

As baggage. See Carriers, § 58.

Exempt from execution. See Exemptions, § 7.

Liability of master for injury to servant from defective tools. See Master and Servant, §§ 8-25.

### TOPOGRAPHY.

Judicial notice of. See Evidence, § 3.

Effect on discovery of mine. See Mines and Minerals, § 2.

### TORPEDOES.

Liability of persons keeping railroad torpedoes. See Explosives, § 1.

### TORTS.

See, also, Negligence.

Obligations arising in tort as subject to accord and satisfaction. See Accord and Satisfaction, § 5.

Liability of charitable institutions for torts of servants. See Charities, § 4.

Liability of directors for torts. See Corporations, § 43.

Right to waive tort and sue in assumpsit. See Election of Remedies, § 2.

Of married women. See Husband and Wife, §§ 19-21.

Of insane persons. See Insane Persons, § 5.

Liability of city for. See Municipal Corporations, § 31.

Liability of parent for torts of child. See Parent and Child, § 4.

Of partners. See Partnership, § 12.

Liability of principal for torts of agent. See Principal and Agent, § 13.

Liability of receivers for. See Receivers, § 5.

Release of one joint wrongdoer as release of all. See Release, §§ 3, 4.

### § 1. Joint Liability for Negligent Injury.

Joint and several liability. 16: 250.

Illustrations. 16: 251-255.

Right of innocent party jointly liable, to indemnity from the guilty party. 16: 255.

— Owner paying damages for injury from negligence of contractor. 16: 256.

### § 2. Assumpsit for.

Right to waive tort and sue in assumpsit. 134: 188-196.

### TOTAL LOSS.

What constitutes total loss in fire insurance. See Insurance, § 34.

### TOWNS.

See, also, Counties; Municipal Corporations. Liability to garnishment. See Garnishment, § 3.

Highway districts. See Highways.

Records of town meetings. See Municipal Corporations, § 7.

School districts. See Schools and School Districts.

### § 1. Estoppel.

Application of doctrine of estoppel to governmental bodies. 137: 356.

### TRACKS.

Duty of railroad to persons on or near tracks. See Railroads, § 7.

### TRACTION ENGINES.

Use of highway by. See Highways, § 7.

### TRADEMARKS AND TRADE NAMES.

GENERAL PRINCIPLES, § 1.

WORDS, PHRASES AND DEVICES CONSTITUTING VALID TRADEMARK, § 2.

UNREGISTERED SECRETS, § 3.

ASSIGNMENT OF TRADEMARK, § 4.

**§ 1. General Principles.**

Use of trademarks. 85: 84.  
 Must express origin and ownership.  
     85: 85.  
 Truthfulness. 85: 86.  
 Novelty and utility. 85: 88.

**§ 2. Words, Phrases and Devices Constituting Valid Trademark.**

Arbitrary and fanciful. 85: 88.  
 Descriptive words—Character or quality. 85: 91.  
     — Generic terms. 85: 96.  
     — Use, purpose or ingredients. 85: 98.  
     — Acquired meaning. 85: 99.  
 Words not sufficiently descriptive. 85: 100.  
 Suggestive words. 85: 100.  
 Proper and personal terms—Name of maker or owner. 85: 102.  
     — Different persons of same name. 85: 103.  
     — Corporate names. 85: 106.  
     — Fictitious names. 85: 107.  
 Geographical names. 85: 107.  
     — Mineral waters. 85: 111.  
 Names of material or article. 85: 112.  
 Words in common use. 85: 112.  
 Names of publications or books. 85: 113.  
 Signs. 85: 114.  
 Patents and copyrights. 85: 116.  
 Combination of letters. 85: 117.  
 Combination of numbers. 85: 118.  
 Color of label. 85: 120.  
 Form of article or package. 85: 121.  
 Devices and symbols. 85: 123.

**§ 3. Unregistered Secrets.**

Protection of unregistered secret processes and trade secrets. 133: 759-768.

**§ 4. Assignment of Trademark.**

Effect of assignment of trademark when it consists partly or wholly of the name of the assignor. 17: 497-499.

**TRADE SECRETS.**

Protection of. See Goodwill, § 2; Patents, § 1.  
 Enjoining disclosure of. See Injunction, § 1.  
 Sale of. See Sales, § 4.

**TRADE UNIONS.**

Equity jurisdiction over. See Associations, § 4.

Boycott. See Conspiracy, § 2.  
 Combinations of labor in violation of anti-trust law. See Monopolies, § 1.

**§ 1. Strikes and Picketing.**

What constitutes a strike. 61: 706.  
 Force, violence and intimidation as elements. 61: 707.  
 Right to quit work by preconcerted action. 61: 707.  
 Lawfulness of strike. 61: 707, 708.  
 Intimidation and picketing is unlawful. 61: 709.  
 Carrying banners in front of place of business. 61: 709.  
 Enjoining intimidation. 61: 710.  
 Inducing others to quit work is unlawful. 61: 710, 711.

**TRADING.**

See Exchange of Property.

**TRADING STAMPS.**

Power to declare issue of trading stamps criminal. See Criminal Law, § 1.

**TRAIN CONDUCTOR.**

As vice-principal. See Master and Servant, § 19.

**TRAIN DISPATCHER.**

As vice-principal. See Master and Servant, §§ 19, 20.

**TRAINING SCHOOLS.**

See Reformatories, § 1.

**TRAINS.**

Transportation of goods and passengers on. See Carriers.  
 Injuries to persons on or near tracks from operation of trains. See Railroads; Street Railroads.

**TRAIN-WRECKING.**

Resulting in death as homicide. See Homicide, § 10.

**TRAMPS.**

As vagrants. See Vagrancy, § 2.

**TRANSCRIPT.**

Effect of filing transcript of justice court in court of record. See Justices of the Peace, § 1.

**TRANSFER.**

See Deeds; Sales; Vendor and Purchaser.  
 Of shares of stock. See Corporations, §§ 20-26.

**TRANSFER TAXES.**

Transfers subject to taxation. See Taxation, § 26.

**TRANSITORY ACTIONS.**

What are. See Venue, § 1.

When transitory actions may not be prosecuted in foreign state or country. See Venue, § 2.

**TRANSITORY PROPERTY.**

Place of taxation of property in transit or not permanently located. See Taxation, § 13.

**TRANSPORTATION.**

Of freight, passengers and livestock on trains, street-cars, elevators and ships. See Carriers; Shipping.

**TRAVELERS.**

Status as hotel guest or boarder. See Innkeepers, § 1.

**TRAVELING SALESMEN.**

Exemptions of. See Exemptions, § 3.

**TREES.**

Overhanging boundaries. See Adjoining Land Owners, § 2.

Fruit trees. See Crops.

Rights of abutting owners in trees growing along highway. See Highways, § 4.

Cutting trees as irreparable injury. See Injunction, §§ 2, 4.

Right to replevin converted trees. See Replevin, § 2.

Penalties and damages for cutting, injuring or removing. See Woods and Forests, § 1.

**TRESPASS.**

Enjoining trespass to land. See Injunction, § 4.

As element of larceny. See Larceny, § 4.

Duty of railroad to persons trespassing on track. See Railroads, § 7.

Liability of trespasser for use and occupation. See Use and Occupation, § 1.

Venue of action for damages for. See Venue, § 1.

Damages for trespass to timber or forests. See Woods and Forests, § 1.

**§ 1. Assumpsit for.**

Right to waive tort and sue in assumpsit. 134: 195, 196.

**§ 2. Equity Jurisdiction Over.**

Origin and development. 99: 732.

Grounds and foundation. 99: 732.

Modern scope. 99: 734.

Circumstances affecting. 99: 735.

**§ 3. Expulsion of Trespasser.**

Right to expel unnecessary force. 93: 254.

Duty to warn trespasser. 93: 256.

Use of unnecessary force. 93: 257.

Killing trespasser. 93: 258.

**TRESPASSING ANIMALS.**

Summary impounding and sale. See Animals, § 6.

**TRESPASS TO TRY TITLE.**

On default of purchaser of land. See Vendor and Purchaser, § 2.

**TRIAL.**

ABSENCE OF JUDGE, § 1.

ARGUMENT OF COUNSEL, § 2.

MISCONDUCT IN ARGUMENT WARRANTING REVERSAL, § 3.

MISCONDUCT AND REMARKS OTHER THAN IN ARGUMENT, § 4.

INVASION OF PROVINCE OF JURY, § 5.

URGING OR COERCING VERDICT, § 6.

OBJECTIONS TO EVIDENCE, § 7.

DELIBERATIONS OF JURY, § 8.

EFFECT OF SEPARATION OF JURY, § 9.

Validity of contracts controlling procedure. See Contracts, § 8.

Of criminal cases. See Criminal Law, §§ 43-56.

Of proceedings to intervene. See Intervention, § 3.

Libels in the course of judicial proceedings. See Libel and Slander, §§ 5-8.

Of right to personality. See Replevin, § 1.

**§ 1. Absence of Judge.**

In general. 122: 721.

During taking of evidence. 122: 726.

When verdict is returned. 122: 726.

When view is taken. 122: 727.

Leaving another to preside. 122: 727.

Absence of one of several judges. 122: 728.

**§ 2. Argument of Counsel.**

Right to argue questions of law or read law to the jury. 1: 54.

Right of court to limit argument or to refuse to hear any argument. 46: 25.

**§ 3. Misconduct in Argument Warranting Reversal.**

Assuming facts not in evidence. 9: 559.  
— Illustrations. 9: 560-564.

Alluding to evidence as incompetent and illegal. 9: 565.

Personal abuse of witnesses, parties or jurors. 9: 565.

Language calculated to degrade party. 9: 566.

Commenting on change of venue. 9: 568.

Appeal to prejudice. 9: 568.

Mode of curing error in argument. 9: 569.

Opening statement to jury. 9: 570.

#### § 4. Misconduct and Remarks Other Than in Argument.

In general. 100: 690.

Knowingly asking incompetent and inadmissible questions. 100: 690.

Statement of what it is expected to prove. 100: 691.

Insulting witnesses. 100: 692.

Disparaging opponent's evidence as it comes in. 100: 693.

Improper questions to, or remarks concerning, jurors. 100: 693.

Improper remarks concerning law governing the case. 100: 694.

Similar conduct by opponent. 100: 694.

Misconduct provoked by adversary. 100: 694.

Necessity for objection to misconduct. 100: 694, 695.

Duty of court to curb or reprimand counsel. 100: 698.

Means of preventing misconduct. 100: 698.

#### § 5. Invasion of Province of Jury.

Instructing on matters of fact. 14: 36, 37.

Remarks of court showing bias or sympathy. 14: 38.

Assuming existence of facts. 14: 44.

Intimating that weight should be given certain evidence or credibility of witnesses. 14: 45.

Discussing evidence sneeringly or in any manner tending to discredit it. 14: 47.

#### § 6. Urging or Coercing Verdict.

Right to order further deliberation and urge agreement. 105: 569.

Impressing jury with importance of case and expense of retrial. 105: 571.

Urging juror to yield and agree with majority. 105: 571.

Telling jurors they must agree. 105: 574.

Reflection on honesty or integrity of jurors. 105: 575.

Threat to keep jury for extended time. 105: 576.

Threat of personal inconvenience to jurors. 105: 579.

#### § 7. Objections to Evidence.

To what extent and in what circumstances a party may estop himself from objecting to incompetent evidence. 130: 758-763.

#### § 8. Deliberations of Jury.

Withdrawal of juror and its effect. 78: 781.

#### § 9. Effect of Separation of Jury.

During the trial. 103: 155.

After retiring for deliberation. 103: 156.

After agreeing upon the verdict. 103: 157.

— Sealed verdict. 103: 158.

Time and mode of objection to separation. 103: 158.

#### TROLLEY CARS.

See Street Railroads.

Duty as to wires. See Electricity, § 1.

#### TROVER AND CONVERSION.

Rights arising on additions or increments to property wrongfully taken. See Accession, § 1.

Against broker, right to waive the tort and sue in assumpsit. See Brokers, § 4.

Wrongful intermixture of goods. See Confusion of Goods, § 1.

Right to waive tort and sue in assumpsit. See Election of Remedies, § 2.

Civil action to recover stolen goods. See Larceny, § 9.

Venue of. See Venue, § 1.

For cutting and removing timber. See Woods and Forests, § 1.

#### § 1. In General.

Refusal to register stock on corporate books as conversion. 136: 1039.

Return of goods by defendant no bar to suit for damages. 134: 195.

Waiver of tort and suit in assumpsit for value of property taken. 134: 191-194.

#### § 2. Conversion Sufficient to Sustain Trover.

Definitions. 24: 795.

Sale of chattels of another. 24: 797.

Sale by agent, bailee or officer without authority. 24: 797.

By buyer of property sold without authority. 24: 797.

Without sale. 24: 798.

By words alone. 24: 798.



Illustrations showing various modes.  
 24: 800.  
 By delivery to one other than the owner. 24: 801.  
 By delivery to one found in possession. 24: 802.  
 By abetting or encouraging wrongdoer. 24: 803.  
 Intent of wrongdoer—Materiality. 24: 804.  
 Demand and refusal as evidence of conversion. 24: 806.  
 Demand and refusal essential to conversion. 24: 807.  
 Negligence or nonfeasance cannot constitute. 24: 808.  
 Restoration of property—Duty of owner to accept. 24: 808.  
 — Accepted by owner mitigates damages. 24: 811.  
 Liability of agent or servant. 24: 811.  
 — Conversion from master or principal. 24: 812.  
 By bailee or carrier. 24: 815.  
 By mortgagor, mortgagee or part owner. 24: 816.  
 Property subject to conversion. 24: 818.  
 — Evidences of debt. 24: 818, 819.

### § 3. Damages.

Duty of person whose property has been converted to repurchase like property to mitigate or fix the measure of damages. 6: 365.

## TRUST DEEDS.

As wills. See Wills, § 2.

## TRUSTEES.

Of corporation. See Corporations, § 40.

## TRUSTS.

IN GENERAL, § 1.  
 CREATION OF SIMPLE TRUST IN LAND BY PAROL, § 2.  
 CREATION OF CONSTRUCTIVE TRUST IN LAND BY PAROL, § 3.  
 PAROL VOLUNTARY TRUST IN PERSONALTY, § 4.  
 VOLUNTARY TRUSTS ARISING FROM DECLARATIONS OF DONOR, § 5.  
 EFFECT OF WRITINGS NOT DESIGNATING BENEFICIARY OR TERMS OF TRUST, § 6.  
 PAYMENT OF PRICE BY ONE SPOUSE FOR CONVEYANCE TO THE OTHER, § 7.  
 POWER TO REVOKE DEED OF TRUST, § 8.  
 RIGHT OF TRUSTEE TO ACT THROUGH AGENT, § 9.

INVESTMENTS A TRUSTEE MAY MAKE WITHOUT INCURRING LIABILITY IN CASE OF LOSS, § 10.  
 WHO MAY EXECUTE TRUST AFTER DEATH OF ALL THE TRUSTEES, § 11.  
 LIABILITY OF BENEFICIARY FOR ACTS OF TRUSTEE IN CONTRAVENTION OF TRUST, § 12.  
 SALES AND CONVEYANCES BY TRUSTEES, § 13.  
 TERMINATION OF TRUST AND OF TRUSTEE'S TITLE, § 14.  
 LIEN OF CREDITORS AGAINST TRUST ESTATE, § 15.  
 FOLLOWING TRUST FUNDS, § 16.  
 Right of trustee to prosecute appeal. See Appeal and Error, § 2.  
 Charitable trusts. See Charities, § 1.  
 Conclusiveness, against beneficiaries, of judgments against trustees. See Judgment, § 30.  
 Contracts and combinations violating anti-trust law. See Monopolies, § 1.  
 For support of grantor as mortgage. See Mortgages, § 6.  
 Application of rule against perpetuities to trusts. See Perpetuities, § 1.  
 Severability of perpetuities and forbidden trusts. See Perpetuities, § 3.  
 Place of taxation of trust property. See Taxation, § 13.  
 Wills creating precatory trusts. See Wills, §§ 37–39.  
 Devisee or legatee as trustee ex maleficio. See Wills, § 54.

### § 1. In General.

Nature, kinds and validity. 115: 774–776.

Validity of trust providing that property shall go to beneficiary to the exclusion of his alienees and creditors. 9: 405–408.

Where one person pays the consideration for land conveyed to another. 127: 253.

Limitation of actions to recover trust funds. 136: 483.

### § 2. Creation of Simple Trust in Land by Parol.

Necessity for writing in general. 115: 776.

What is a trust in land. 115: 779.

Manifestation of oral trust in writing. 115: 780.

Part performance of trust. 115: 782.

Execution of trust. 115: 783.

Creation contemporaneous with transfer of land. 115: 784.

Creation independent of transfer of land. 115: 786.

### § 3. Creation of Constructive Trust in Land by Parol.

- In general. 115: 786.  
 Actual fraud. 115: 787.  
 Constructive fraud—In general. 115: 791.  
 — Domestic relations. 115: 792–794.  
 — Priest and parishioner. 115: 795.  
 — Attorney and client. 115: 795.  
 — Principal and agent. 115: 795.  
 — Partners. 115: 795.  
 — Cotenants or joint tenants. 115: 796.  
 — Debtor and creditor. 115: 796.  
 — Miscellaneous relations. 115: 798.

### § 4. Parol Voluntary Trust in Personalty.

- Gift and trust distinguished. 51: 389.  
 Expression of intention to become trustee. 51: 390.  
 Distinction between unexecuted and prima facie trust of bank deposit. 51: 390.  
 Creation by parol. 51: 390.

### § 5. Voluntary Trusts Arising from Declarations of Donor.

- General principles. 34: 189.  
 What settlements are voluntary. 34: 190.  
 Meritorious consideration. 34: 191.  
 Voluntary settlement under seal. 34: 193.  
 Formal requisites of instruments creating. 34: 195.  
 Language necessary to create trust. 34: 195.  
 Imperfect voluntary trust not enforced in equity. 34: 196.  
 Trusts partly executed and partly executory. 34: 198.  
 Foundation of doctrine as to executed and executory trusts. 34: 198.  
 Essentials to complete settlement. 34: 199.  
 Declaration of trust by conveyance to trustee. 34: 200.  
 Declaration of trust where settler constitutes himself trustee. 34: 201.  
 Enforcement of declaration of trust in favor of another. 34: 201.  
 Intention of donor. 34: 202.  
 — Evidenced by promise not fulfilled. 34: 202.

— Evidenced by ineffectual attempt to assign property to another. 34: 203.

Conflicting decisions. 34: 205.

Illustrative cases in which donor was held to have constituted himself a trustee. 34: 207.

Assignment of equitable interests. 34: 208.

Assignment of corporate stock and shares. 34: 209.

Assignment of choses in action. 34: 210.

Gifts from husband to wife. 34: 212.

Effect of retention by grantor of instrument creating voluntary trust. 34: 212.

Effect of retention of subject of settlement. 34: 213.

Acceptance of gift by donee. 34: 214.

Acceptance by trustee. 34: 214.

Declarations of trust testamentary in character. 34: 215.

Perfection of trust as question of fact. 34: 216.

Against whom settlement is valid—Subsequent purchasers and creditors. 34: 216.

Revocation of voluntary settlements. 34: 217.

Revocation of naked trusts. 34: 218.

Revocation of incomplete trust. 34: 218.

Revocation for mistake or fraud. 34: 219.

Trust deeds for benefit of creditors. 34: 219.

Deposits in trust for another. 34: 219.

Parol evidence to rebut presumption of trust. 34: 220.

When gift is regarded as complete. 34: 221.

Existence of trust a question of fact. 34: 222.

Possession of pass-book. 34: 223.

Privity of donee in the transaction. 34: 223.

Notice of trust to donee. 34: 224.

Gifts invalid because testamentary in character. 34: 224.

### § 6. Effect of Writings not Designating Beneficiary or Terms of Trust.

Necessity for designation of beneficiary. 82: 513.

Note or check payable to trustee. 82: 514.

Corporate stock or securities in name of trustee. 82: 516.  
 Gift in a will to trustee. 82: 517.  
 Deposit in bank to trustee. 82: 520.  
 Deed in favor of trustee. 82: 522.

**§ 7. Payment of Price by One Spouse for Conveyance to the Other.**

Rule where husband pays for deed to wife. 127: 254.  
 Rule where wife pays for deed to husband. 127: 256.  
 Rule where both pay part of purchase price. 127: 258.  
 Rule where one pays for deed to both. 127: 261.  
 Rule where title is taken by mistake or fraud in name of one spouse. 127: 261.  
 Rule where there is an agreement as to the disposition or purpose of the purchase. 127: 262.  
 Rule where purchase money was loaned or paid after conveyance. 127: 264.  
 Presumption of gift to wife where husband pays for deed to her. 127: 265.

**§ 8. Power to Revoke Deed of Trust.**

General rule. 20: 858.  
 Voluntary settlements. 20: 859.  
 Trust reserving annuity to grantor. 20: 860.  
 Illustrations. 20: 860-864.

**§ 9. Right of Trustee to Act Through Agent.**

Discretionary matters. 93: 615.  
 Ministerial duties. 93: 615.  
 Ordinary course of business. 93: 615.  
 Ratification of agent's acts. 93: 615.

**§ 10. Investments a Trustee may Make Without Incurring Liability in Case of Loss.**

General principles controlling. 132: 372.  
 Stock speculations. 132: 377.  
 Investments involving business chances. 132: 378.  
 Personal securities and stocks and bonds of private corporations. 132: 380.  
 Land purchases. 132: 387.  
 Place for investment. 132: 387.  
 Loans on land and chattels. 132: 389.

**§ 11. Who may Execute Trust After Death of All the Trustees.**

Death of less than all. 130: 508.  
 Death of sole or last surviving trustee. 130: 515.  
 Right of administrator cum testamento annexo. 130: 523.  
 Who may move the appointment of a successor. 130: 523.  
 Expiration of trust by operation of law. 130: 523.

**§ 12. Liability of Beneficiary for Acts of Trustee in Contravention of Trust.**

Construction of trustee's powers. 63: 468.  
 Rights of those dealing with trustees. 63: 468.  
 — Volunteers. 53: 469.  
 — Purchaser from purchaser with notice. 63: 469.  
 What constitutes notice of a trust. 63: 470.  
 Purchaser's reliance on records. 63: 471.  
 Reliance on face of trust deed. 63: 473.  
 Effect of clothing trustee with indicia of title. 63: 474.  
 Election to hold trustee or follow trust property. 63: 474.  
 Laches. 63: 475.  
 Estoppel by release, confirmation or acquiescence. 63: 475.

**§ 13. Sales and Conveyances by Trustees.**

Rights of purchaser without notice of trust. 19: 266.  
 Rights of purchaser with notice. 19: 267.  
 Joint trustees. 19: 268.  
 Validity of transfer in contravention of trust. 19: 268.  
 Duties of intending purchaser. 19: 269.  
 — Duty to ascertain powers of trustee. 19: 270.  
 Requisites of power of sale. 19: 271.  
 Sale under order of court. 19: 272.  
 Extent and termination of power of sale. 19: 273.  
 Trust to pay debt ceases when debt is paid. 19: 274.  
 All trustees must join. 19: 275.  
 Effect of death of grantor. 19: 276.

Conveyance through attorney in fact. 19: 276, 277.

Time of sale. 19: 276, 284.

Restraints on power of sale imposed by grantor. 19: 278.

Assent of beneficiary. 19: 279.

Conditions precedent to sale. 19: 279.

Necessity for sale. 19: 280.

Duty of purchaser to see that funds are properly applied. 19: 282-284.

Duty of trustee to act impartially. 19: 285.

Effect of inadequacy of price. 19: 285.

Right to fix reserve price. 19: 286.

Notice of time and place of sale. 19: 287.

Sale on credit. 19: 288.

Who may purchase at trustee's sale. 19: 289.

Trustee must conduct sale. 19: 290.

Effect of irregular, improvident or fraudulent sale. 19: 293.

Illustrations of causes for vacating sale. 19: 294.

Rights of purchaser from purchaser. 19: 296.

Right of trustee to purchase. 136: 805-810.

#### § 14. Termination of Trust and of Trustee's Title.

By merger. 100: 101.

By execution of trust. 100: 102.

By revocation. 100: 104.

Judicial action for purpose of terminating. 100: 105.

#### § 15. Lien of Creditors Against Trust Estate.

In general. 19: 67.

Power of trustee to incur debts. 19: 67-72.

#### § 16. Following Trust Funds.

Commingled funds. 46: 608.

Right to pursue and recover trust funds. 32: 125.

Following funds into hands of stranger. 32: 126.

Funds invested in land. 32: 127.

Right ceases when means of identification fail. 32: 127.

Substantial identity of fund sufficient. 32: 128.

Earmark not necessary to identification. 32: 128.

Money mingled in bank account of trustee. 32: 129.

Funds invested in partnership. 32: 129.

#### TRUTHFULNESS.

Of trademark. See Trademarks and Trade Names, § 1.

Impeaching veracity of witness. See Witnesses.

#### TRYING TITLE.

To public office. See Officers, § 12.

#### TURBARY.

Right of. See Mines and Minerals,

#### TURNTABLE CASES.

Doctrine explained. See Negligence, § 12.

#### ULTRA VIRES.

Liability of corporate officers on ultra vires contracts. See Corporations, § 38.

Doctrine of. See Corporations, § 54.

#### UNATTENDED TEAMS.

Duty when leaving teams on public highways. See Highways, § 9.

#### UNAUTHORIZED ACTS.

Liability of principal for unauthorized acts of agent. See Principal and Agent, § 14.

#### UNBORN CHILD.

Killing. See Abortion.

Deed of land to. See Deeds, § 13.

Rights of. See Infants, § 10.

Judgments against. See Judgment, § 35.

Provisions for in wills. See Wills, § 34.

#### UNCOMMUNICATED THREATS.

Evidence of, in homicide cases. See Homicide, § 21.

#### UNCOMPLETED BUILDING.

Burning, as arson. See Arson, § 2.

#### UNCOMPLETED WILL.

As nuncupative will. See Wills, § 10.

#### UNCONSCIONABLE CONTRACTS.

Validity. See Contracts, § 7.

#### UNCONTROLLABLE IMPULSE.

As justification for crime. See Criminal Law, § 9.

Acts prompted by, choice between dangerous or disagreeable alternatives, and desire to save life or property as proximate cause of injury. See Negligence, § 10.

## UNDERGROUND ROADS.

Underground railroads as additional servitudes. See Railroads, § 3.

## UNDERGROUND SERVITUDES.

What are. See Municipal Corporations, § 26. On highways. See Highways, § 5.

## UNDERGROUND WATER.

Right of land owner to support from. See Adjoining Land Owners, § 1.  
Pollution of, by adjoining owners. See Adjoining Land Owners, § 2.  
With defined channel, percolating and non-percolating. See Waters and Watercourses, § 9.  
Land owner's rights in. See Waters and Watercourses, § 10.

## UNDERTAKINGS.

Liability of sureties on undertaking on appeal. See Appeal and Error, § 4.

## UNDISCLOSED PRINCIPAL.

Actions by. See Principal and Agent, § 19.

## UNDUE INFLUENCE.

As ground for cancellation of instrument. See Cancellation of Instruments, § 5.  
Nature and essentials of undue influence annulling will. See Wills, § 15.

## UNGENTLEMANLY CONDUCT.

As ground for expulsion of stockholder. See Corporations, § 29.

## UNIFORMITY.

Of occupation tax or license. See Licenses, § 4.  
Of property tax. See Taxation, § 5.

## UNIONS.

Labor unions. See Trade Unions.

## UNITED STATES.

See, also, States.  
Liability to garnishment. See Garnishment, § 3.  
Applicability of statute of limitations to. See Limitation of Actions, § 7.  
Validity of civil service laws. See Municipal Corporations, § 9.

### § 1. Immunity from Suit.

Waiver and evasion of immunity. 108: 831.  
Whether extends to officers. 108: 831.  
Whether suit is against officer or sovereign. 108: 832.  
Actions to which officers are subject though they assume to act for sovereign. 108: 835-844.

## UNITED STATES MAIL.

Offense of opening or stealing and violation of postal laws. See Postoffices, §§ 1-3.

## UNIT VOTING OF STOCK.

Validity of agreement to vote corporate stock as a unit. See Corporations, § 32.

## UNKNOWN OWNERS.

Proceedings against. See Absentees, § 2.  
Action to quiet title against. See Quieting Title, § 2.

## UNLAWFUL DETAINER.

See Forcible Entry and Detainer, § 2.

## UNLAWFUL SEARCH.

Security from. See Searches and Seizures, § 1.

## UNLICENSED DOG.

Right to kill. See Animals, § 2.

## UNLIQUIDATED DEMANDS.

Consideration for accord and satisfaction of. See Accord and Satisfaction, § 3.

## UNLOADING STOCK.

Duty of carriers. See Carriers, § 29.

## UNMARRIED PERSON.

As head of family within meaning of homestead law. See Homestead, § 1.

## UNPAID SUBSCRIPTION.

Liability of stockholders for. See Corporations, § 33.

## UNPROFESSIONAL CONDUCT.

Disbarment for. See Attorney and Client, § 3.

## UNREGISTERED SECRETS.

Protection of. See Trademarks and Trade Names, § 3.

## UNREPEATED MESSAGES.

Duty to find addressee of. See Telegraphs and Telephones, § 2.

## URGING VERDICT.

Right of court to urge jury to agree. See Criminal Law, § 49.  
In civil case. See Trial, § 6.

**USE AND OCCUPATION.****§ 1. Liability of Trespasser.**

Right to sue trespasser in assumpsit. 134: 196.

**USES AND TRUSTS.**

See Trusts.

Charitable uses and trusts. See Charities, § 1.

**USURY.**

Stipulation in note for attorney's fees as device to cover usury. See Bills and Notes, § 2.

Agreements for higher or exorbitant date of interest after default. See Interest, § 1.

**§ 1. What Transactions are Usurious.**

Form of transaction is not material. 46: 178.

Definitions and tests. 46: 179.

Intention of parties. 46: 179.

Necessity for loan. 46: 182.

Sales. 46: 182.

Interest on deferred payments for construction work. 46: 182.

Discounting commercial paper. 46: 183, 185.

Accommodation paper. 46: 184.

Discounts by national banks. 46: 185.

Forbearance in consideration of usury. 46: 187.

Loan must be in money. 46: 187.

Principal sum must be payable absolutely. 46: 188.

Amount must exceed legal rate. 46: 189.

Interest at frequently recurring periods. 46: 189.

Interest in advance. 46: 189.

Compound interest. 46: 190.

Parol agreements. 46: 191.

Agreement to pay penalty must be absolute. 46: 192.

Expenses of collection. 46: 193.

Contingent right to excessive interest. 46: 194.

Expense of making loan. 46: 194.

Exactions for services not rendered. 46: 196.

Commissions to agents. 46: 196, 198.

— Agent of lender. 46: 197, 198.

— Agent not compensated by lender. 46: 198.

— Undisclosed agent. 46: 200.

Building and loan associations. 46: 200.

Conflict of laws. 46: 201.

**§ 2. Criminal Responsibility.**

Criminal responsibility of corporation for. 133: 779..

**UTILITY.**

Of trademark or name. See Trademarks and Trade Names, § 1.

**UTTERING.**

Uttering forged instrument. See Forgery, § 2.

**VACANCY CLAUSE.**

Construed. See Insurance, § 10.

**VACATING.**

Award of arbitrators. See Arbitration and Award, § 3.

Satisfaction of execution because of failure of title of purchaser. See Execution, § 5.

Execution sale. See Execution, § 11.

Vacation or abandonment of highway. See Highways, § 6.

Judgment. See Judgment, § 14.

Satisfaction of judgment. See Judgment, § 49.

Public streets. See Municipal Corporations, § 28.

**VACCINATION.**

Power of board of health to regulate. See Health, §§ 2, 4.

**VAGRANCY.**

IN GENERAL, § 1.

ACTS CONSTITUTING, § 2.

INDICTMENT AND INFORMATION, § 3.

PROSECUTION AND PUNISHMENT, § 4.

GENERAL NOTE, § 5.

**§ 1. In General. .**

Historical review of ancient and modern law. 137: 941.

Definitions. 137: 944.

Synonyms. 137: 945.

Validity of vagrancy statutes. 137: 967.

Summary. 137: 969.

**§ 2. Acts Constituting.**

Lewdness. 137: 947.

Abandonment of family. 137: 950.

Begging. 137: 950.

Unlawful callings. 137: 951.

Disobedience of parents. 137: 951.

Idle and disorderly persons. 137: 952.

Trespassers. 137: 955.

Confidence men. 137: 955.

Keeping a disorderly house. 137: 956.

**§ 3. Indictment and Information.**

In general. 137: 956.

Alabama and California. 137: 957.

Georgia and Idaho. 137: 958.  
 Indiana, Louisiana and Massachusetts.  
 137: 959.  
 Michigan. 137: 960.  
 North Carolina. 137: 961.

#### § 4. Prosecution and Punishment.

Jurisdiction. 137: 965.  
 Trial. 137: 966.  
 Evidence necessary. 137: 961.  
 Punishment. 137: 968.

#### § 5. General Note.

Definition of vagrancy. 38: 643.  
 Construction and validity of statutes.  
 38: 644.  
 Right to jury trial. 38: 644.  
 Sufficiency of indictment. 38: 645.  
 Sufficiency of evidence. 38: 645.  
 Arrest of vagrant without warrant.  
 38: 646.  
 Commitment as false imprisonment.  
 38: 646.  
 Vagrancy as ground for divorce. 38:  
 646.

### VALUATION.

Of goodwill of partnership. See Goodwill,  
 § 3.  
 Of life estates and reversions. See Life Es-  
 tates, § 1.

### VALUE.

Judicial notice of. See Evidence, § 1.

### VAPORS.

Emanating from adjoining lands. See Ad-  
 joining Land Owners, § 2.

### VARIANCE.

In proceedings to obtain attachment. See  
 Attachment, § 4.

### VARIETY SHOWS.

See Theaters and Shows.

### VAULTS.

Safety deposit vaults. See Warehousemen,  
 § 5.

### VEHICLES.

See Automobiles; Bicycles; Carriages.  
 Exempt from execution. See Exemptions, § 8.

### VEINS.

Right to follow vein of ore beyond end lines.  
 See Mines and Minerals, § 5.

Index-Digest—23

## VENDOR AND PURCHASER.

IN GENERAL, § 1.  
 TIME AS ESSENCE OF CONTRACT, § 2.  
 OPTION TO PURCHASE LAND, § 3.  
 BONA FIDE PURCHASER, § 4.  
 POSSESSION OF LAND AS NOTICE, § 5.  
 WHAT IS A MARKETABLE TITLE, § 6.  
 REMEDIES OF VENDOR, § 7.  
 — RIGHT TO RECOVER POSSESSION,  
 § 8.  
 WAIVER OF VENDOR'S LIEN, § 9.  
 REMEDIES OF PURCHASER, § 10.  
 — MEASURE OF DAMAGES, § 11.  
 — RECOVERY OF MONEY PAID UN-  
 DER CONTRACT VOID UNDER STAT-  
 UTE OF FRAUDS, § 12.  
 LIEN OF PURCHASER, § 13.

Contract to convey as color of title. See Ad-  
 verse Possession, § 10.

Effect of reversal of judgment on rights of  
 purchaser from party against whom judg-  
 ment was reversed. See Appeal and Er-  
 ror, § 8.

Damages for fraud in inducing sale or ex-  
 change of land. See Damages, § 5.

What constitutes contract for sale of land  
 within statute of frauds. See Frauds,  
 Statute of, § 7.

Vendor's lien on homestead. See Homestead,  
 §§ 3, 5.

Contracts to convey homestead by one spouse  
 only. See Homestead, § 8.

Estoppel of purchase to plead statute of limi-  
 tations. See Limitation of Actions, § 14.

Effect of lis pendens as notice to purchaser.  
 See Lis Pendens, § 1.

Assignment of contract of purchase as equi-  
 table mortgage. See Mortgages, § 3.

Effect of defective records on rights of third  
 persons. See Records, § 3.

Enforcement of specific performance of con-  
 tract to convey land. See Specific Per-  
 formance, § 8.

#### § 1. In General.

Merger of contract of sale in deed. 16:  
 622.

Forfeiture of payments made on failure  
 of purchaser to pay balance  
 due. 42: 417.

#### § 2. Time as Essence of Contract.

Rule at law. 104: 266.

Rule in equity. 104: 266.

Making time essence by contract. 104:  
 267.

When time is of essence—In general.  
 104: 268.

— Fluctuation in value. 104: 268.

— Payment in installments. 104:  
 269.

— Time fixed for payment. 104:  
 271.

— Time to make title. 104: 274.

Notice to perform. 104: 274.

Options. 104: 275.

**§ 3. Option to Purchase Land.**

Acceptance. 118: 597.  
 Assignment. 118: 599.  
 Consideration. 118: 597.  
 From lessor to lessee. 118: 598.  
 Mutuality. 118: 594, 595.  
 Tender under. 118: 598.  
 Time as essence of. 118: 598.  
 Waiver by delay. 118: 598.  
 Withdrawal. 118: 593.

**§ 4. Bona Fide Purchaser.**

Presumption that subsequent purchaser is a bona fide purchaser. 17: 288-290.

**§ 5. Possession of Land as Notice.**

General rule. 104: 332.  
 Limitations of the rule. 104: 333.  
 Easements and licenses. 104: 333.  
 — Water rights, drains and dams. 104: 333.  
 — Highways, ways and railroad right of way. 104: 334.  
 Notice of rights and claims. 104: 335.  
 Duty to inquire as to rights and claims. 104: 335.  
 Knowledge of possession—Necessity. 104: 336.  
 — Nonresident purchasers. 104: 337.  
 Essentials of possession. 104: 337.  
 Residence and possession consistent with record title. 104: 337.  
 Possession after change in occupant's title. 104: 338.  
 Abandoned possession. 104: 339.  
 Part possession. 104: 339.  
 Joint possession. 104: 339.  
 Wrongful possession. 104: 340.  
 Erection and occupancy of buildings. 104: 340.  
 Possession of school or church. 104: 341.  
 Occupancy of room in flat. 104: 341.  
 Possession of mining property or adjoining land. 104: 341.  
 Unimproved land. 104: 342.  
 Cutting timber. 104: 342.  
 Fencing land. 104: 342.  
 Pasturing land. 104: 343.  
 Instruments under which possession is held. 104: 344.  
 — Unrecorded. 104: 345.  
 Persons in possession—Prior grantor. 104: 345.  
 — Prior grantee. 104: 347.  
 — Tenant in common. 104: 348.

— Tenant. 104: 348, 349.  
 — Life tenant. 104: 350.  
 — Agent, husband or wife. 104: 350.  
 — Parent or child. 104: 351.  
 — Widow and heirs. 104: 352.  
 — Parties to judicial proceedings. 104: 352.  
 Persons chargeable with notice. 104: 353.  
 — Purchasers. 104: 353.  
 — Mortgagees. 104: 354.

**§ 6. What is a Marketable Title.**

Definition and general principles. 132: 992.  
 Illustrations showing sufficiency of title. 132: 996.  
 Sufficiency of title by prescription. 132: 1022.  
 Sufficiency of record title. 132: 1034.  
 Tax titles. 132: 1043.  
 Marketability of title as depending on opinion of attorneys. 132: 1043.

**§ 7. Remedies of Vendor.**

Right to maintain separate suit for the debt and to enforce the lien securing it. 73: 567.  
 Action at law as waiver of lien. 73: 568.

**§ 8. — Right to Recover Possession.**

Default of purchaser. 107: 722.  
 Form or nature of conveyance. 107: 723.  
 Time as essence. 107: 724.  
 Re-entry and resumption of possession. 107: 724.  
 Ejectment. 107: 724.  
 Trespass to try title. 107: 725.  
 Summary proceedings. 107: 725.  
 Conditions precedent—Tender of deed. 107: 725.  
 — Notice of rescission or forfeiture and notice to quit. 107: 726.  
 — Demand for payment or possession. 107: 727.  
 — Return of consideration. 107: 728.  
 Parties to suit—Plaintiffs. 107: 728.  
 — Defendants. 107: 729.  
 Equities and defenses of vendee—Tender of performance. 107: 729.  
 — Equities. 107: 730.



- Improvements made during possession. 107: 730.
- Statute of limitations. 107: 731.

### § 9. Waiver of Vendor's Lien.

- Definitions. 137: 186.
- Intention of vendor. 137: 191.
- Express and implied waiver. 137: 192.
- Waiver not presumed. 137: 193.
- Taking security from third person. 137: 195.
- Purchaser's payment to third person. 137: 197.
- Transfer of vendee's notes. 137: 197.
- Revival of lien. 137: 198.
- Conveyance to third person at request of purchaser. 137: 199.
- Taking personal security of purchaser. 137: 200.
- Novation or substitution of sureties. 137: 201.
- Taking additional security. 137: 203.
- Effect of fraud of purchaser. 137: 205.
- Effect of laches of vendor. 137: 205.
- Estoppel of vendor. 137: 205.
- Effect of recovery of judgment for purchase money. 137: 207.

### § 10. Remedies of Purchaser.

- Carelessness as bar to relief for misrepresentation. 32: 384.

### § 11. — Measure of Damages.

- Law governing. 106: 964.
- Presumption of damages. 106: 965.
- Statutory rule. 106: 965.
- Early English rule. 106: 965.
- American rule. 106: 967.
- Effect of want of title or defective title. 106: 972.
- Effect of inability to pass good title caused by act of vendor. 106: 973.
- Effect of inability to pass good title caused by unforeseen circumstances. 106: 974.
- Defective title known at time of purchase. 106: 974.
- Under parol contract of purchase. 106: 974.
- Social standing of parties. 106: 975.
- Ultimate conveyance of land. 106: 975.
- Where consideration is other than money. 106: 975.
- Where no part of price was paid. 106: 976.

- Where only part of price was paid. 106: 976.

- Where only interest was paid. 106: 976.

- Where land was in possession of purchaser. 106: 977.

- Where land was to be selected. 106: 977.

- Effect of decrease in value of land. 106: 977.

- Damages accruing subsequent to breach. 106: 977.

### § 12. — Recovery of Money Paid Under Contract Void Under Statute of Frauds.

- Repudiation of contract by purchaser. 105: 793.
- Willingness of vendor to perform. 105: 793.
- Willingness of purchaser to perform. 105: 794.
- Tender and demand of performance. 105: 794.
- Possession by vendee. 105: 795.
- Misrepresentation by vendor. 105: 795.
- Destruction of buildings on land purchased. 105: 796.
- Sale of timber. 105: 796.
- Purchase for benefit of third person. 105: 796.
- Lease of real property. 105: 796.
- Form of action for recovery. 105: 796.
- Limitation of actions. 105: 797.
- Lien of purchaser and right to interest on money paid. 105: 797.

### § 13. Lien of Purchaser.

- Extent to which lien is recognized in America. 127: 873.
- Origin, history and general nature. 127: 875.
- Various theories on which recognition is based. 127: 876.
- Effect of default of vendor. 127: 882.
- Effect of default of purchaser. 127: 883.
- Effect of rescission of the contract. 127: 883.
- Waiver or estoppel to enforce. 127: 887.
- Application of doctrine to parol contracts. 127: 887.
- Effect of setting aside sale by married woman. 127: 888.

To what lands or interests lien attaches. 127: 888.

Payments and disbursements covered by the lien. 127: 888.

### VENDOR'S LIEN.

As equitable mortgage. See Mortgages, § 3.

Lien of seller of goods. See Sales, § 8.

Waiver of. See Vendor and Purchaser, § 9.

### VENUE.

Place where crime is committed. See Criminal Law, § 14.

Statement of matters relating to venue in certificate of acknowledgment. See Acknowledgment, § 4.

Mandamus to compel change of venue. See Mandamus, § 6.

Of replevin suit. See Replevin, § 3.

### § 1. Local and Transitory Actions.

Distinguished. 22: 22.

Common-law test. 22: 22.

Actions against public officers. 22: 23.

Actions to determine interests in land. 22: 24.

Actions for injuries to persons and chattels. 22: 24.

Trover. 22: 24.

Damages for trespass to land. 22: 25.

Breach of warranty in a deed. 22: 25.

Miscellaneous actions. 22: 25-27.

### § 2. When Transitory Action may not be Prosecuted in Foreign State or Country.

In general. 59: 869.

Discretion to decline jurisdiction of cause arising in foreign country. 59: 870.

Effect of treaties with foreign nations. 59: 872.

Discretion to decline jurisdiction of cause arising in sister state. 59: 873.

Cases barred by foreign statute of limitations. 59: 878.

Enjoining actions in another state or country. 59: 879.

— After appointment of receiver. 59: 881.

— Actions to avoid effect of previous suits. 59: 882.

— Suits to avoid agreements. 59: 883.

— Suits to evade exemption laws. 59: 883.

— Suits to obtain relief not warranted by laws of domicile of parties. 59: 884.

— Actions barred by statute of limitations. 59: 885.

### VENEREAL DISEASE.

As justification for breach of contract to marry. See Breach of Marriage Promise, § 1.

Divorce for communication of. See Divorce, § 4.

Recovery for disease communicated during illicit intercourse. See Health, § 1.

### VENTILATION OF CARS.

Stock cars. See Carriers, § 29.

### VERACITY OF WITNESS.

Evidence of bad reputation of witness for. See Witnesses, § 14.

### VERDICT.

Presence of judge at rendition. See Criminal Law, § 44.

Mode of arriving at. See Criminal Law, § 54.

Quotient verdict. See Criminal Law, § 56.

Absence of judge at rendition of. See Trial, § 1.

### VERIFICATION.

Of application to dissolve attachment. See Attachment, § 5.

Of chattel mortgage. See Chattel Mortgages, § 2.

Of claims against estates of decedents. See Executors and Administrators, § 18.

### VERMIN.

Liability of warehousemen for loss to stored goods by. See Warehousemen, § 6.

### VESSELS.

Collisions between. See Collision, § 1.

Relation between part owners of. See Shipping, § 1.

Place of taxation of. See Taxation, § 13.

### VESTED LEGACIES.

Nature and essentials. See Wills, § 48.

### VESTED RIGHTS.

Validity of statute affecting. See Constitutional Law, § 17.

### VETERAN SOLDIERS.

Discrimination in favor of, in imposing license tax. See Licenses, § 4.

### VETERINARY SURGEONS.

Degree of care and skill required of. See Physicians and Surgeons, § 1.

### VICE-PRINCIPALS.

Who are. See Master and Servant, §§ 19, 20.

### VIOIOUS ANIMALS.

Injuries by vicious dogs or other animals. See Animals, § 9.

**VIEW BY JURY.**

Presence of judge at. See Criminal Law, § 44.

**VIGILANTES.**

Disqualification to serve as jurors. See Jury, § 3.

**VIOLATION OF LAW.**

As avoiding insurance policy. See Insurance, § 23.

**VIOLENCE.**

See Force.

**VOID JUDGMENT.**

Estoppel to question void divorce decree. See Divorce, § 18.  
When judgment is void. See Judgment, § 2.  
Vacating. See Judgment, § 15.

**VOID MARRIAGE.**

What marriages are void. See Marriage, § 4.

**VOID ORDINANCE.**

Enjoining enforcement of. See Injunction, § 3.

**VOID TAX SALE.**

Recovery of money paid at. See Taxation, § 18.

**VOIR DIRE.**

Examination of juror. See Jury, § 4.

**VOLATILE OIL.**

Liability of persons keeping explosive oils. See Explosives, § 1.

**VOLUNTARY APPEARANCE.**

Of absent citizens as conferring jurisdiction. See Absentees, § 1.

**VOLUNTARY ASSOCIATIONS.**

See Associations, § 1.

**VOLUNTARY CONVEYANCES.**

Made to hinder or defraud creditors. See Fraudulent Conveyances, § 2.  
Reformation of. See Reformation of Instruments, § 1.

**VOLUNTARY EXPOSURE.**

What constitutes voluntary exposure to danger. See Insurance, § 24.  
As contributory negligence. See Negligence, § 11.

**VOLUNTARY PAYMENTS.**

Right to recover payments voluntarily made. See Payment, § 3.

**VOLUNTARY TRUSTS.**

Parol voluntary trust in personalty. See Trusts, § 4.  
Arising from declarations. See Trusts, § 5.

**VOLUNTEERS.**

As servants. See Master and Servant, § 32.  
Not entitled to subrogation. See Subrogation, §§ 1, 5.

**VOTING.**

Right of preferred stockholders to vote at corporate meeting. See Corporations, § 19.

**VOTING MACHINES.**

Validity of statutes authorizing. See Elections, § 5.

**VOTING TRUSTS.**

Validity of corporate stock voting trusts. See Corporations, § 32.

**WAGERS.**

Gambling bets. See Gaming, § 6.

**WAGES.**

Police power to regulate. See Constitutional Law, § 10.

**WAGONS.**

Exempt from execution. See Exemptions, § 8.

**WAIVER.**

See Abandonment; Release.

Of forfeiture of certificate in mutual aid society. See Beneficial Associations, § 1.  
Of plea of former jeopardy. See Criminal Law, § 20.  
Of curtesy. See Curtesy, § 11.  
Of forfeiture of insurance policy. See Insurance, §§ 29-31.  
Of forfeiture of lease. See Landlord and Tenant, § 14.  
Of mechanic's lien. See Mechanics' Liens, § 7.  
Of lien of seller of goods. See Sales, § 8.  
Of vendor's lien. See Vendor and Purchaser, § 9.  
Of option to purchase land. See Vendor and Purchaser, § 3.

**WALLS.**

Right to maintain insecure walls which threaten injury to adjoining owner. See Adjoining Land Owners, § 2.  
Party-walls. See Party-walls.

**WANT OF CHASTITY.**

Impeaching witness by showing. See Witnesses, § 15.

**WANT OF SKILL.**

See Negligence.

Liability of abstractor for. See Abstracts of Title, § 1.

**WANTON INJURY.**

Liability of master for wanton acts of servant. See Master and Servant, § 31.

**WAR.**

Effect of clause in fire policy excepting loss during. See Insurance, § 10.

**WARDS.**

Power of guardian over person of ward. See Guardian and Ward, § 4.

**WAREHOUSEMEN.**

WHO ARE, § 1.  
STATE REGULATION OF CHARGES, § 2.  
COLD STORAGE, § 3.  
GENERAL LIABILITY, § 4.  
DUTIES ARISING ON RECEIPT OF GOODS, § 5.  
PRESERVATION OF GOODS AFTER RECEIPT, § 6.

As building subject to arson. See Arson, § 2.  
Warehousing distinguished from bailment. See Bailment, § 1.  
Liability of freight carrier as warehouseman. See Carriers, § 17.  
Liability of carrier as warehouseman of baggage. See Carriers, § 60.  
Safe deposit companies. See Depositaries, § 1.  
Storing explosives. See Explosives, § 1.

**§ 1. Who are.**

Defined and distinguished from bailees. 136: 214, 215.

**§ 2. State Regulation of Charges.**

Evolution and diminution of doctrine announced in *Munn v. Illinois*. 62: 289-304.

**§ 3. Cold Storage.**

Degree of care required. 90: 295.  
Liability for negligence. 90: 296.  
Limitation of liability. 90: 298.  
Burden of proof. 90: 299.  
Measure of damages. 90: 300.  
Common carriers. 90: 300.

**§ 4. General Liability.**

Creation. 136: 245.  
Limitation. 136: 246-254.  
Termination. 136: 254.

**§ 5. Duties Arising on Receipt of Goods.**

Approaches to warehouse. 136: 217.  
The warehouse and its construction and location. 136: 218.  
Collapse of warehouse. 136: 220.  
Safety deposit warehouse. 136: 221.  
Banks as custodians. 136: 222.  
Floating warehouses. 136: 222.

**§ 6. Preservation of Goods After Receipt.**

In general. 136: 212.  
Rule of due care. 136: 223.  
Negligence of warehousemen or servants. 136: 224.  
Loss by fire, fireproof warehouses. 136: 226.  
Loss by theft, burglar-proof buildings. 136: 228.  
Loss by leakage. 136: 229.  
Loss by act of God. 136: 230.  
Loss by overwhelming force. 136: 231.  
Loss by vermin, rats, mice, bugs and weevils. 136: 231-234.  
Loss by temperature of freezer and cold storage plant. 136: 234.  
Loss by storage in wrong place. 136: 235.  
Storage of grain in bulk. 136: 238.  
Storage of explosives. 136: 239.  
Watchman. 136: 240.  
Removal of goods to prevent impending destruction. 136: 243.

**WARNING PASSENGER.**

Duty of carrier to warn passenger of danger. See Carriers, § 50.

**WARNING SERVANT.**

Duty of master. See Master and Servant, § 17.

**WARNING TRESPASSERS.**

Duty to warn trespassers before forceful expulsion. See Trespass, § 3.

**WARRANT.**

Right to arrest without. See Arrest, § 1.  
Extradition warrant. See Extradition, § 6.  
Municipal warrants. See Municipal Corporations, § 36.  
Search-warrants. See Searches and Seizures, § 1.

**WARRANTY.**

Breach of covenant of warranty by eviction. See Covenants, § 7.  
Parol evidence to show. See Evidence, § 28.  
Distinguished from guaranty. See Guaranty, § 1.  
In insurance policies. See Insurance, §§ 10, 19.  
Implied warranty of quality on sale of goods. See Sales, § 7.

**WASTE.**

Remedies of taxpayer for waste of public funds. See Municipal Corporations, § 14.  
Remedies of remainderman for. See Remainders, § 3.  
By appropriator of water. See Waters and Watercourses, § 1.

**WATCHES.**

Exempt from execution as wearing apparel.  
See Exemptions, § 4.

**WATCHMEN.**

Duty of warehousemen to keep. See Warehousemen, § 6.

**WATERED STOCK.**

Fraudulent overissue of corporate stock. See Corporations, § 11.

**WATERS AND WATERCOURSES.**

APPROPRIATION, § 1.

PREScriptive TITLE TO WATER, § 2.

ESSENTIALS OF TITLE BY PRESCRIPTION, § 3.

BY AND AGAINST WHOM PRESCRIPTIVE TITLE MAY BE ASSERTED, § 4.

RIPARIAN RIGHTS, § 5.

APPORTIONMENT OF ACCRETIONS, § 6.

POLLUTION BY DEBRIS, § 7.

POLLUTION BY MUNICIPALITIES, § 8.

PERCOLATING WATERS—WHAT ARE, § 9.

— LAND OWNER'S RIGHTS IN, § 10.

RIGHT TO ACCELERATE OR DIMINISH FLOW TO OR FROM LANDS OF ANOTHER, § 11.

CONDUITS AND TANKS AS ADDITIONAL SERVITUDES, § 12.

LIABILITY OF WATER COMPANIES, § 13.

LIABILITY OF IRRIGATION COMPANIES, § 14.

ICE, § 15.

Right of land owner to support from underground water. See Adjoining Land Owners, § 1.

Pollution of wells and underground waters. See Adjoining Land Owners, § 2.

Acquisition of title to waters on public lands by adverse possession. See Adverse Possession, § 1.

Waters as boundaries. See Boundaries, § 3.

Water rights as appurtenances. See Deeds, § 16.

Right to fish in non-navigable waters. See Fish, § 2.

Rights and liabilities of abutting owners as to waters, drains and ditches along highways. See Highways, § 4.

Hydrants, tanks and pumping plants as additional servitudes. See Highways, § 5.

Taxation for municipal waterworks. See Taxation, § 3.

**§ 1. Appropriation.**

Preliminary notice. 60: 799.

Federal statutes. 60: 800.

Relation back of appropriator's title. 60: 800.

Prerequisites to valid appropriation. 60: 802.

Intent and purpose of diversion. 60: 802.

Mode of diversion. 60: 806.

Actual use of water. 60: 806.

Amount deemed appropriated. 60: 807.

Waste not permitted. 60: 809.

Diligence in diverting. 60: 809.

Diligence in applying to useful purpose. 60: 811.

Waters not used. 60: 812.

Increase of use. 60: 813.

Change in place or mode of diversion or use. 60: 813.

Size or capacity of ditch. 60: 814.

Appropriation for sale. 60: 816.

**§ 2. Prescriptive Title to Water.**

Surface waters. 93: 712.

Percolating waters. 93: 712.

Statutes controlling. 93: 713.

**§ 3. Essentials of Title by Prescription.**

Beneficial use. 93: 719.

Knowledge, notice and notoriety. 93: 720.

Adverse possession or use under claim of right. 93: 722.

— Commencement of use and possession. 93: 728.

Continuity of use. 93: 729.

**§ 4. By and Against Whom Prescriptive Title may be Asserted.**

Who may assert title. 93: 714.

Against whom title may be asserted—Government. 93: 714.

— Prior appropriator. 93: 717.

— Lower riparian owner. 93: 717.

— Upper appropriators and riparian owners. 93: 717.

**§ 5. Riparian Rights.**

Nature of rights. 20: 225.

Irrigation rights. 20: 225.

Joint action for diversion of water. 20: 225.

**§ 6. Apportionment of Accretions.**

Water frontage and actual shore determines right. 122: 982.

Accretion to river banks. 122: 982.

Accretion to shores of lakes. 122: 984.

Accretion to shores of bay or cove. 122: 986.

**§ 7. Pollution by Debris.**

Deposit of debris or waste from factories in or near stream so that it is

carried to lands of riparian owners. 30: 551-557.

### § 8. Pollution by Municipalities.

Reasonable use of stream. 84: 909.

Cities. 84: 911.

— Public convenience. 84: 914.

As nuisance—In general. 84: 916.

— Effect of statutory authority. 84: 920.

— Tide waters. 84: 921.

— Prescriptive rights. 84: 923.

Injuries due to negligence. 84: 923.

Taking private property without compensation. 84: 924.

### § 9. Percolating Waters—What are.

Status distinguished from underground stream. 67: 663.

Subterranean waters which are not percolating. 67: 664.

Subterranean waters which are percolating. 67: 669.

Underground watercourses with defined channel. 67: 668.

Instances of percolating waters. 67: 671.

### § 10. — Land Owner's Rights in.

Percolating water as property of land owner. 99: 66.

Interferences and diminution to which the land owner must submit. 99: 68.

Interferences and diminution to which the land owner need not submit. 99: 71.

### § 11. Right to Accelerate or Diminish Flow to or from Lands of Another.

Diminishing or impeding flow of streams. 85: 708.

— By bridges or dams. 85: 708, 709.

— By other means. 85: 714.

Diminishing or impeding flow of surface water—Water flowing upon one's land. 85: 715.

— Water flowing from one's land. 85: 725.

Accelerating or increasing flow of stream. 85: 725.

Accelerating or increasing flow of surface water. 85: 726.

— Discharging upon lands of another. 85: 730.

— Discharging into stream or natural channel. 85: 733.

### § 12. Conduits and Tanks as Additional Servitudes.

Hydrants as additional servitude. 106: 240.

Tanks and pumping plants as additional servitude. 106: 240.

Water mains and pipes as additional servitude. 106: 266.

### § 13. Liability of Water Companies.

General liability for failure to supply. 81: 478.

Remedy to prevent shutting off water. 81: 479.

Liability for loss by fire. 81: 480.

Liability for furnishing impure water. 81: 483.

Liability to riparian owners for diminishing flow. 81: 484.

Liability of cities supplying water. 81: 486.

### § 14. Liability of Irrigation Companies.

For failure to supply water. 81: 488.

For negligent care of ditch. 81: 492.

To riparian owner. 81: 494.

### § 15. Ice.

Ownership of. 1: 352.

Right to travel upon. 1: 352.

Right to gather ice. 83: 409.

## WAYS.

See Easement; Highways; Private Roads; Streets.

## WEAPONS.

As baggage. See Carriers, § 58.

Right to carry arms. See Criminal Laws, § 1.

Negligent use of firearms. See Homicide, §§ 10, 11.

### § 1. Right to Keep and Bear Arms.

Federal constitution. 115: 199.

State constitutions—Carrying concealed weapons. 115: 200.

— Carrying deadly weapons openly. 115: 202.

— Miscellaneous. 115: 203.

## WEARING APPAREL.

As baggage. See Carriers, § 58.

Exempt from execution. See Exemptions, § 4.

## WEEDS.

Right of land owner to maintain weeds injurious to adjoining owner. See Adjoining Land Owners, § 2.

**WEEK.**

What constitutes. See Time, § 1.

**WEEVILS.**

Liability of warehousemen for loss to goods from. See Warehousemen, § 6.

**WEIGHT OF EVIDENCE.**

Instructions intimating. See Trial, § 5.

**WEIGHTS AND MEASURES.**

Judicial notice of. See Evidence, § 1.

**WELLS.**

Pollution of. See Adjoining Land Owners, § 2.

Artesian. See Waters and Watercourses, § 9.

**WHARVES.**

State regulation of wharfrage. See Commerce, § 1.

Right of riparian owner to construct. See Navigable waters, § 4.

**WHEEL OF FORTUNE.**

As lottery. See Lotteries, § 1.

**WHEREABOUTS UNKNOWN.**

Proceedings against persons whose whereabouts are unknown. See Absentees, § 2.

**WIDOW'S ELECTION.**

When widow is required to elect. See Wills, § 49.

**WIDTH OF ROAD.**

Acquired by prescription. See Adverse Possession, § 3.

**WIFE.**

Rights and disabilities of. See Husband and Wife.

**WILD ANIMALS.**

See Animals, § 1.

State regulation and protection of. See Game, § 1.

**WILLFUL NEGLIGENCE.**

Nonliability of master for willful acts of servant. See Master and Servant, § 33.

**WILLS.**

NATURE AND ESSENTIALS, § 1.

WHAT CONSTITUTES TESTAMENTARY WRITING, § 2.

— CONVEYANCE TO TAKE EFFECT AFTER DEATH, § 3.

INCORPORATION OF OTHER INSTRUMENTS, § 4.

ATTESTATION AND SUBSCRIPTION, § 5.

SUBSCRIBING WITNESSES AND THE EFFECT OF THEIR EVIDENCE SUPPORTING OR OPPOSING WILL, § 6.

JOINT, MUTUAL OR RECIPROCAL WILLS, § 7.

MULTI WILLS, § 8.

HOLOGRAPHIC WILLS, § 9.

NUNCUPATIVE WILLS, § 10.

TESTAMENTARY CAPACITY, § 11.

CONTRACTS TO MAKE WILLS, § 12.

VALIDITY OF WILL LEAVING HEIR PRECISELY WHAT HE WOULD TAKE BY DESCENT, § 13.

PARTIAL INVALIDITY AS ANNULING ENTIRE WILL, § 14.

UNDUE INFLUENCE, § 15.

PRESUMPTION OF UNDUE INFLUENCE, § 16.

INSANE DELUSIONS, § 17.

REVOCATION AND REVIVAL, § 18.

REVOCATION OR CANCELLATION BY MISTAKE, § 19.

IMPLIED REVOCATION FROM CHANGE IN CIRCUMSTANCES OF TESTATOR OTHER THAN MARRIAGE OR BIRTH OF ISSUE, § 20.

REPUBLICATION OF REVOKED WILL, § 21.

WHO MAY CONTEST, § 22.

ESTOPPEL TO CONTEST, § 23.

PROBATE OF FOREIGN WILL, § 24.

LOST OR DESTROYED WILL, § 25.

PROBATE OF LOST OR DESTROYED WILL, § 26.

PROCEEDINGS FOR PROBATE OF LOST OR DESTROYED WILL, § 27.

PROOF OF LOST OR DESTROYED WILL AFTER PROBATE FOR USE IN LEGAL PROCEEDINGS, § 28.

EQUITY JURISDICTION TO CONSTRUE, § 29.

EVIDENCE TO AID CONSTRUCTION, § 30.

DECLARATIONS OF TESTATOR TO SUSTAIN OR DEFEAT WILL, § 31.

DEVISE OF AFTER-ACQUIRED PROPERTY, § 32.

PERSONS ENTITLED TO GIFTS TO A CLASS, § 33.

PROVISIONS FOR AFTER-BORN CHILD, § 34.

PRETERMITTED HEIRS, § 35.

ESTATES CREATED, § 36.

PRECATORY TRUSTS, § 37.

— MODE OF DETERMINING WHETHER WORDS EMPLOYED CREATE A PRECATORY TRUST, § 38.

— CONSTRUCTION OF PRECATORY CLAUSES RELATIVE TO VARIOUS RELATIVES, § 39.

CONDITIONS AND RESTRICTIONS, § 40.

CONDITIONS PRECEDENT, § 41.

EFFECT OF IMPOSSIBILITY OF PERFORMANCE OF CONDITIONS PRECEDENT OR SUBSEQUENT, § 42.

CONDITIONS IN RESTRAINT OF MARRIAGE OR FAVORING DIVORCE, § 43.

WHO MAY EXECUTE POWER OF SALE IN WILL, § 44.

GENERAL BEQUESTS, § 45.

SPECIFIC AND DEMONSTRATIVE BEQUESTS, § 46.

SPECIFIC DEVISES, § 47.

VESTED AND CONTINGENT LEGACIES, § 48.

**WHEN WIDOW IS REQUIRED TO ELECT,**  
§ 49.

**ADEMPMENT OF LEGACIES,** § 50.

— **BY ADVANCEMENT,** § 51.

— **SPECIFIC LEGACIES,** § 52.

**ABATEMENT OF LEGACIES ON DE-**  
**FICIENCY OF ASSETS,** § 53.

**DEVISEE OR LEGATEE AS TRUSTEE EX**  
**MALEFICIO,** § 54.

**PERSONAL LIABILITY OF DEVISEES**  
**FOR CHARGES IMPOSED BY WILL,**  
§ 55.

See, also, **Descent; Executors and Adminis-**  
**trators.**

**Rights of adopted children under devise to**  
**heirs.** See **Adoption,** §§ 1, 2.

**As color of title.** See **Adverse Possession,**  
§ 10.

**Validity of bequests for masses.** See **Char-**  
**ities,** § 3.

**Equitable conversion by will.** See **Conver-**  
**sion,** § 1.

**Who may question unauthorized devise to**  
**corporation.** See **Corporations,** § 55.

**Crops passing by devise of land.** See **Crops,**  
§ 2.

**Succession of estates of intestates.** See **De-**  
**scend,** § 1.

**Applicability of statute of frauds to contract**  
**to make a will.** See **Frauds, Statute of,**  
§ 8.

**Gifts causa mortis.** See **Gifts,** § 3.

**Adjudication of insanity as proof of inca-**  
**pacity to make a will.** See **Insane Persons,**  
§ 4.

**Reformation of wills in equity.** See **Refor-**  
**mation of Instruments,** § 1.

### § 1. Nature and Essentials.

**Definition.** 89: 486.

**Necessity for disposition of property.**  
89: 487.

**Essential characteristics.** 89: 487.

**Multi wills.** 136: 601.

### § 2. What Constitutes Testamentary Writing.

**Rules of construction determining.** 89:  
488.

— **Intention of maker as test.** 89:  
488.

**Materiality of form in general.** 89:  
489.

**Illustrations of informal wills.** 89:  
490.

**Transfer of bank account.** 89: 491.

**Letters.** 89: 491.

**Obligations and acknowledgments of**  
**debts.** 89: 492.

**Contracts.** 89: 493.

**Promissory notes.** 89: 494.

**Leases.** 89: 494.

**Deeds—Distinguished from will.** 89:  
494.

— **Effect of reservation of life estate.**  
89: 495.

— **Importance of maker's intention.**  
89: 496.

— **How intention of maker is ascer-**  
**tained.** 89: 497.

— **Writings of doubtful import.** 89:  
497.

— **Illustrations of wills.** 89: 498.

— **Illustrations of deeds.** 89: 498.

**Instruments partly testamentary.** 89:  
500.

**Trust deeds.** 89: 500.

### § 3. — Conveyance to Take Effect After Death.

**Whether deed or will.** 49: 219.

**Passing title to personalty.** 49: 220.

**Conveyances construed as wills.** 49:  
221.

### § 4. Incorporation of Other Documents.

**Formality of document.** 107: 70.

**Reference in will.** 107: 71.

**Identification of paper.** 107: 72.

**Existence of document.** 107: 73.

**Document creating or defining trust.**  
107: 74.

### § 5. Attestation and Subscription.

**Nature in general.** 114: 209.

**Necessity and number of witnesses.**  
114: 211.

**Subscription or acknowledgment by**  
**testator.** 114: 213.

**Request to witnesses to sign.** 114: 216.

**Publication or declaration of character**  
**of instrument.** 114: 217.

**By witnesses—Necessity.** 114: 221.

— **Mode of subscription.** 114: 222.

— **Time of subscription or attesta-**  
**tion.** 114: 224.

— **Presence of testator.** 114: 224-  
230.

**Knowledge of contents by witnesses.**  
114: 231.

**Attestation clause.** 114: 231.

**Order of execution by testator and wit-**  
**nesses.** 114: 233.

**Order of publication and other requi-**  
**sites.** 114: 235.

**Order of request to witnesses and other**  
**requisites.** 114: 236.

**Mode of observing requisites.** 114:  
236.

**Testimony of attesting witnesses.** 114:  
236.

**Attestation clause as evidence.** 114:  
238.



**§ 6. Subscribing Witnesses and the Effect of Their Evidence Supporting or Opposing Will.**

Number of witnesses required. 77: 459.  
 Competency of witnesses. 77: 459, 460.  
 Credible witnesses. 77: 460.  
 Competency as affected by interest. 77: 462.  
 Competency of executors and their wives. 77: 466.  
 Proof of will. 77: 469.  
 — Lost or destroyed will. 77: 471.  
 Weight and effect of testimony. 77: 473.  
 Devisavit vel non. 77: 480.

**§ 7. Joint, Mutual, or Reciprocal Wills.**

Definitions. 136: 593.  
 Validity. 136: 594.  
 As contract. 136: 596.  
 Form and contents. 136: 601.  
 Revocation. 136: 604.

**§ 8. Multi Wills.**

Validity. 136: 594.  
 As contract. 136: 596.  
 Form and contents. 136: 601.  
 Revocation. 136: 604.

**§ 9. Holographic Wills.**

Definition. 104: 22.  
 Statutory requisites. 104: 23.  
 What writings constitute. 104: 24.  
 Construction of statutes providing for. 104: 25.  
 Must be wholly in handwriting of testator. 104: 26.  
 Necessity and requisites of date. 104: 28.  
 Place where date must be written. 104: 29.  
 Necessity and sufficiency of signature. 104: 29.  
 Place of signature. 104: 30.  
 Attestation. 104: 31: 32.  
 Place where will was lodged or found. 104: 33.  
 Proving will. 104: 34.  
 Republication of revoked will. 76: 261.

**§ 10. Nuncupative Wills.**

Definitions. 67: 572.  
 Capacity to make. 67: 572.

What constitutes last sickness. 67: 573.  
 Attempts to make written wills. 67: 573.

Verbal directions for drawing written will. 67: 574.

Validity and impeachment. 67: 574.

Devise of real estate. 67: 575.

Law of Louisiana. 67: 575.

Witnesses and testamentary intent. 67: 576.

Request to witnesses. 67: 577.

Soldiers and sailors. 67: 577.

**§ 11. Testamentary Capacity.**

Aversion to relatives as affecting mental capacity. 117: 582-585.

**§ 12. Contracts to Make Wills.**

Necessity for writing. 102: 240, 241.

**§ 13. Validity of Will Leaving Heir Precisely What He Would Take by Descent.**

Must be exactly same estate. 75: 155.

Where there is more than one heir. 75: 155, 156.

Reasons for declaring the will void. 75: 158.

Purposes for which valid. 75: 159.

**§ 14. Partial Invalidity as Annuling Entire Will.**

General rule. 120: 739.

When valid and invalid parts are separable. 120: 740.

When invalid parts are inseparable. 120: 743.

**§ 15. Undue Influence.**

No precise test possible. 31: 670.

General definitions. 31: 670.

Free agency must be destroyed, 31: 673.

Must be directed toward execution of will. 31: 674.

Must affect the will. 31: 675.

Influence need not be unlawful. 31: 675.

Proper influences. 31: 676.

Influence of kinship and companionship. 31: 676.

Influence of kind offices or good deeds. 31: 676.

Influence of illicit relations. 31: 677.  
 Argument, persuasion and importunity. 31: 678.

Prejudices and aversions. 31: 680.

Improper influences. 31: 680.  
 Misrepresentation and artifice. 31: 680.  
 Presumptions and burden of proof. 31: 680.  
 — Secrecy in executing will as badge of fraud. 31: 684.  
 Evidence admissible to establish. 31: 686.  
 Amount of evidence required. 31: 687.  
 Circumstantial evidence. 31: 688.  
 Declarations of testator. 31: 690.  
 Affecting part of will, remainder valid. 31: 691.

#### § 16. Presumption of Undue Influence.

When confidential relation exists. 21: 94, 101.  
 Priest or religious adviser and parishioner. 21: 95.  
 Where testator is under guardianship. 21: 96.  
 Where will is unnatural. 21: 96, 99.  
 Where will is drawn by a legatee. 21: 97.  
 Business or social relations. 21: 98.  
 Family relations. 21: 98.  
 Husband and wife. 21: 100, 102.  
 Guardian and ward. 21: 101.  
 Parent and child. 21: 102.  
 Attorney and client. 21: 102.  
 Brother and sister. 21: 103.  
 Spiritual medium and believer. 21: 103.  
 Persons living in illicit relations. 21: 103.  
 Physician and patient. 21: 103.  
 Illustrations. 21: 103, 104.

#### § 17. Insane Delusions.

Defined. 63: 81.  
 Prejudices and eccentricities. 63: 89.  
 Spiritualism and other beliefs. 63: 91.  
 Belief in dreams, ghosts, divining rods and clairvoyance. 64: 92.  
 Undue influence of spiritualism. 63: 93.  
 Effect on testamentary capacity. 63: 94, 95.  
 — Aversion against heirs. 63: 96.  
 — Bias in favor of heirs. 63: 97.  
 — Bias in favor of particular object. 63: 98.  
 — Delusions respecting value of property. 63: 99.  
 Burden of proof. 64: 106.

#### § 18. Revocation and Revival.

Modes of. 28: 344.

Intent necessary. 28: 345.  
 By agents. 28: 346.  
 Destruction of will. 28: 346.  
 — Presumed from inability to find will. 28: 347.  
 Burning will. 28: 348.  
 Tearing will. 28: 348.  
 Canceling, obliterating and mutilating. 28: 350.  
 Presumption from mutilation. 28: 351.  
 Subsequent writing. 28: 352.  
 Construing will and codicil together. 28: 353.  
 Revival of revoked will. 28: 354.  
 Evidence of intent to revive revoked will. 28: 355.  
 Implied revocation. 28: 356.  
 — Change of testator's circumstances. 28: 356.  
 — Sale of property devised. 28: 357.  
 — Marriage of woman. 28: 358.  
 — Marriage of man. 28: 359.  
 — Marriage and birth of issue. 28: 359.  
 — Lapse of legacy or devise. 28: 360.  
 Wills executed in duplicate. 28: 361.  
 Evidence of revocation. 28: 361.  
 — Declarations of testator. 28: 361, 362.  
 Multi will. 136: 604.

#### § 19. Revocation or Cancellation by Mistake.

Revocation by mistake. 48: 198.  
 Cancellation by mistake. 48: 199.  
 Revocation by mistake of fact—Illustrations. 48: 200.  
 Parol evidence to show mistake. 48: 201.

#### § 20. Implied Revocation from Change in Circumstances of Testator Other Than Marriage or Birth of Issue.

Origin and history of the doctrine. 130: 628.  
 General principles involved. 130: 629.  
 Statutory rule. 130: 630.  
 Change in condition or circumstances. 130: 631.  
 Change in family or beneficiaries of will. 130: 632.  
 — Adoption of children. 130: 632.  
 — Divorce. 130: 632.  
 Change in testator's real property—Voluntary alienation. 130: 635.

- Executory contracts of sale. 130: 641.
- Requisites and validity of conveyance. 130: 643.
- Mortgage to or reservation by testator. 130: 646.
- Conveyance to or other transaction with, devisee. 130: 646.
- Purchase of perfection of title to devised land. 130: 649.
- Involuntary alienation. 130: 649.
- Alienation of personal property. 130: 650.

Illustrations showing when revocation is implied from sale of property and extent of revocation. 130: 651.

### § 21. Republication of Revoked Will.

- Definition of republication. 76: 249.
- Destruction of second will. 76: 249.
- Parol republication. 76: 253.
- When will devises land. 76: 255.
- Statutory provisions affecting. 76: 256.
- By codicil. 76: 260.
- Holographic wills. 76: 261.

### § 22. Who may Contest.

- General principles controlling right. 130: 187.
- Nature of interest. 130: 188.
- Heirs and next of kin. 130: 189.
- Devisees and legatees. 130: 195.
- Creditors. 130: 196.
- Persons having rights independent of will. 130: 202.
- Persons cited or appearing in probate proceedings. 130: 203.
- Public administrator and attorney general. 130: 204.
- Miscellaneous. 130: 204.
- Restoration of benefit received under will as condition precedent to right to contest. 130: 216.

### § 23. Estoppel to Contest.

- In general. 130: 208.
- By acceptance of benefit under will. 130: 212.
- Restoration of benefit received under will as condition precedent to right to contest. 130: 216.
- Agreements affecting right to contest. 130: 218.

### § 24. Probate of Foreign Will.

- Original probate. 113: 211.
- Record of foreign probate. 113: 211.

- Persons entitled to record. 113: 212.
- Will of resident dying abroad. 113: 212.
- Necessity for record. 113: 213.
- Proof of foreign probate. 113: 214.
- Conclusiveness and effect—In general. 113: 214.
- Where real estate is involved. 113: 215.
- Conclusiveness of foreign probate. 115: 518.

### § 25. Lost or Destroyed Will.

- General status. 110: 447.
- Presumption arising from inability to find will. 110: 447.
- Necessity for rebuttal of presumption of revocation. 110: 448.
- Loss or destruction before or after death of testator. 110: 449.
- Effect of statutes requiring proof of fraudulent destruction where will was destroyed before death of testator. 110: 450.
- What constitutes fraudulent destruction. 110: 452.
- Opportunity to destroy as evidence of fraudulent destruction. 110: 453.
- Right to show use of undue influence in procuring destruction. 110: 454.

### § 26. Probate of Lost or Destroyed Will.

- What must be shown in general. 110: 454.
- Right to stipulate or admit execution or contents. 110: 455.
- Evidence admissible to establish. 110: 455.
- Declarations of testator. 110: 457.
- Burden of proof. 110: 457.
- Amount or degree of proof. 110: 457–459.
- Effect of number of witnesses to execution and contents. 110: 460.
- Establishment of will by proof of incapacity to revoke. 110: 462.
- Proof of execution. 110: 463–464.
- Proof of continued existence of will or rebuttal of presumption of revocation. 110: 464.
- Proof of contents—How much must be proved. 110: 466.
- Sufficiency of proof of substance. 110: 467.

- Effect of discrepancy in evidence. 110: 468.
  - Effect of evidence of scrivener in alternative. 110: 468.
  - Effect of evidence of impression without positive recollection. 110: 469.
  - Where will was fraudulently destroyed. 110: 470.
  - Evidence of witness who heard will read or read only part of it. 110: 470.
  - Use of copy or draft in proving contents. 110: 470.
  - Copy of holographic will. 110: 471.
  - Record of will. 110: 471.
- § 27. Proceedings for Probate of Lost or Destroyed Will**
- Jurisdiction. 110: 475.  
 Right of action and parties. 110: 476.  
 Form of proceeding or petition. 110: 476.  
 Examination of witnesses. 110: 476.  
 Right of distant heir to appeal. 110: 477.
- § 28. Proof of Lost or Destroyed Will After Probate for Use in Legal Proceedings.**
- Presumption arising from loss after probate. 110: 472.  
 Effect of probate records or copies thereof. 110: 472.  
 Effect of statute requiring two witnesses to establish will. 110: 472.  
 Where probate records have been destroyed by conflagration or other disaster. 110: 473.
- § 29. Equity Jurisdiction to Construe.**
- Origin and history. 129: 79.  
 General rules governing. 129: 80–87.  
 Who may invoke. 129: 88.  
 Necessity that clause of will to be construed affect subsisting substantial rights. 129: 91.  
 Necessity for present need of construction. 129: 91.  
 Necessity that clause to be construed be doubtful and disputed. 129: 92.
- § 30. Evidence to Aid Construction.**
- General rule. 50: 279.  
 Extrinsic evidence inadmissible. 50: 280.
- Identification of papers referred to in will. 50: 281.  
 To show intention—Extrinsic evidence inadmissible. 50: 281.  
 — Declarations of testator inadmissible. 50: 282.  
 To show mistake. 50: 283.  
 To show that a child was intentionally omitted. 50: 284.  
 Exceptions permitting extrinsic evidence. 50: 284.  
 Identification of land devised. 50: 289.
- § 31. Declarations of Testator to Sustain or Defeat Will.**
- Questions considered. 107: 460.  
 Where part of res gestae. 107: 460.  
 Relating to fact of execution of will. 107: 460.  
 Condition of mind or capacity of testator. 107: 463.  
 Fraud or undue influence. 107: 465.  
 On application for probate of lost will. 107: 468.  
 On question of revocation. 107: 469.  
 To show whether one will was revived on revocation of another. 107: 472.  
 To aid in the construction of a will. 107: 473.
- § 32. Devise of After-acquired Property.**
- Devise and bequest distinguished. 135: 795.  
 Gathering testator's intention. 135: 796.  
 Intention need not be expressed in direct terms. 135: 798.  
 Interpretation of "now." 135: 800.  
 Residuary clause. 135: 801.
- § 33. Persons Entitled to Gifts to a Class.**
- What constitutes gift to a class. 73: 413.  
 Survivorship in a class. 73: 414.  
 Where gift is immediate. 73: 414.  
 — Children en ventre. 73: 415.  
 — Illegitimate children. 73: 415.  
 Where distribution is postponed until termination of precedent interest. 73: 416.  
 — Precedent estate in trust. 73: 420.  
 — Until given age. 73: 421.  
 Rule against perpetuities. 73: 426.

- Vested gifts. 73: 430.
- Independent gifts. 73: 438.

### § 34. Provision for After-born Child.

What constitutes a provision in a will for an after-born child of testator. 15: 592.

Illustrations. 15: 593-595.

### § 35. Pretermitted Heirs.

Object of statute. 115: 580.

Omitted child unaffected by will. 115: 580.

Omitted child takes by descent. 115: 581.

Intention to omit—When inferable. 115: 582.

— Necessity for legacy. 115: 584.

After-born children. 115: 585.

Posthumous children. 115: 586.

Adopted and illegitimate children. 115: 587.

Parol or extrinsic evidence to show intent. 115: 588.

Presumption and burden of proof. 115: 590.

### § 36. Estates Created.

Life estates. 11: 99.

Estates in fee. 11: 100.

Rule in Shelley's Case. 11: 100-107.

### § 37. Precatory Trusts.

Defined and explained. 106: 500.

Tendency of courts respecting creation of. 106: 502.

General requirements. 106: 505.

Precatory words must have imperative meaning. 106: 506.

Precatory words must be certain as to both subject and object of intended trust. 106: 507.

Distinction between precatory and discretionary trusts. 106: 508.

Construction of precatory terms relative to charitable religious, educational or other public uses. 106: 530.

### § 38. — Mode of Determining Whether Words Employed Create a Precatory Trust.

General rule of construction. 106: 509.

Construction of various precatory terms. 106: 510.

Effect of words indicating mere motive of testator. 106: 515.

Effect of courteous command. 106: 515.

Words addressed to executor. 106: 516.

Words dependent upon status or education of testator. 106: 517.

Effect of varied use of precatory words in different parts of will. 106: 518.

Effect where meaning of words is doubtful. 106: 519.

Where no trust is created by terms used. 106: 521.

### § 39. — Construction of Precatory Clauses Relative to Various Relatives.

Parents. 106: 522.

Children. 106: 522.

Adopted children. 106: 526.

Stepchildren. 106: 526.

Brothers and sisters. 106: 527.

Nephews and nieces. 106: 528.

Relations, near relatives, blood relations and kin. 106: 528.

Relations in law. 106: 529.

Poor and needy relatives. 106: 529.

Servants and strangers. 106: 530.

### § 40. Conditions and Restrictions.

What words create conditions subsequent. 79: 764.

Illustrations. 79: 765.

### § 41. Conditions Precedent.

What are. 102: 366.

Tests for determining whether a condition is precedent. 102: 367, 368.

— Where condition would avoid the will. 102: 369.

— Want of limitation over. 102: 369.

Doubts are resolved against. 102: 369.

Failure to perform and its consequence. 102: 370.

### § 42. Effect of Impossibility of Performance of Conditions Precedent or Subsequent.

Conditions in devises. 70: 833.

— Void conditions. 70: 834.

Conditions in bequests. 70: 834, 835.

— Illegal condition subsequent. 70: 836.

### § 43. Conditions in Restraint of Marriage or Favoring Divorce.

General and other unreasonable restraint. 84: 147.

Reasonable restraints. 84: 148.

— Against marrying certain persons or class. 84: 148.

— Limitations respecting age. 84: 148.

— Requiring donor's consent to marriage. 84: 149.

— Provision for support of donee while single. 84: 149.

Conditions precedent and subsequent distinguished. 84: 149.

Conditions in favor of divorce or separation. 84: 150.

Conditions against marriage. 84: 150.

### § 44. Who may Execute Power of Sale in Will.

In general. 80: 96.

Joint powers. 80: 96.

Surviving executors. 80: 97.

Qualifying executors. 80: 100.

Administrator with will annexed. 80: 102.

Power given especially to donee named in will. 80: 106.

Power attached to office. 80: 110.

Trust powers. 80: 115.

Delegation of power. 80: 122.

Executor of an executor. 80: 123.

### § 45. General Bequests.

In general. 140: 603.

Pecuniary legacies. 140: 605.

Securities given in terms of money. 140: 607.

Stated derivation of subject of bequest. 140: 609.

Residuary bequests. 140: 610.

— Actual, virtual or quasi. 140: 610.

— Words of testator identifying items. 140: 611.

Estate entire or in portions. 140: 611.

Test of quality of bequest. 140: 612.

Time within which suit for legacy must be brought. 136: 476.

### § 46. Specific and Demonstrative Bequests.

Specific bequests in general. 140: 581.

Individual bequests—Identification of subject by ownership. 140: 585.

— Identification of subject by unmistakable marks. 140: 588.

— Identification by stated derivation. 140: 589.

— Identification by location. 140: 591.

Unclassified specific bequests. 140: 592.

Demonstrative bequests. 140: 598.

Test of quality of bequest is testator's intent. 140: 613.

### § 47. Specific Devises.

In general. 140: 577.

All devises specific at common law. 140: 578.

American tendency to treat devises and bequests by one rule. 140: 579, 580.

### § 43. Vested and Contingent Legacies.

Distinguished. 10: 471.

Law favors vesting. 10: 472.

General rules as to vesting. 10: 473.

When legacies are contingent. 10: 477.

### § 49. When Widow is Required to Elect.

General common-law doctrine. 92: 695.

Effect of particular provisions in will—Devise of life estate. 92: 699.

— Devise during widowhood. 92: 700.

— Annuity or income for support of widow. 92: 700.

— Devise to trustee to sell. 92: 701.

— Provision for division between widow and children. 92: 701.

— Other devises and bequests. 92: 702.

Statutory provisions—Effect on common law. 92: 703.

— Conflict of laws. 92: 705.

Community property. 92: 705.

### § 50. Ademption of Legacies.

Defined. 95: 343.

By acquisition. 95: 363.

By alienation of personality. 95: 363.

By alienation of land. 95: 364.

Bequest of proceeds. 95: 365.

Change in subject of bequest. 95: 365.

Renewal of lease. 95: 364.

Demonstrative legacies. 95: 369.

Construction by court. 95: 368.

Mortgage as revocation of devise. 95: 369.  
 Effect of codicil on adeemed legacy. 95: 370.

#### § 51. — By Advancement.

To testator's children. 95: 344, 345.  
 To strangers. 95: 346.  
 By whom and to whom made. 95: 346.  
 For a particular purpose. 95: 347.  
 Requisites of ademption by advancement to children.  
 — Portions ejusdem generis. 95: 348.  
 — Who are in loco parentis. 95: 349.  
 Devise of land. 95: 352.  
 Pro tanto ademption. 95: 353.  
 Burden of proof. 95: 354.  
 Presumptions. 95: 354.  
 Evidence admissible. 95: 354.

#### § 52. — Specific Legacies.

Intention of testator. 95: 356.  
 Bequest of debt. 95: 357.  
 Corporate stocks and bonds—By sale. 95: 359.  
 — By exchange and conversion. 95: 359.  
 — Act of law or gradual acquisition. 95: 360.  
 — Unauthorized investment. 95: 361.  
 — Insanity of testator. 95: 361.  
 Mortgages. 95: 362.  
 Insurance policies. 95: 363.  
 Partnership articles. 95: 363.

#### § 53. Abatement of Legacies on Deficiency of Assets.

Kinds of legacies. 8: 720.  
 Specific legacy defined. 8: 720.  
 Demonstrative legacy defined. 8: 721.  
 General legacy defined. 8: 721.  
 Order of appropriation of assets to legacies. 8: 722.  
 Intention of testator as guide. 8: 722.  
 Rules of abatement. 8: 724.  
 Exceptions to the rules. 8: 725.  
 Legacy to creditor who has compounded. 8: 726.  
 Miscellaneous. 8: 726.

#### § 54. Devisee or Legatee as Trustee Ex Maleficio.

Devise or legacy induced by fraudulent promise. 106: 95.  
 Parol proof to establish trust. 106: 99.

Index-Digest—24

#### § 55. Personal Liability of Devisees for Charges Imposed by Will.

Payment of legacies. 129: 1057.  
 Support of relative. 129: 1059.  
 Payment of debts. 129: 1059.  
 Rule of nonliability. 129: 1060.  
 Circumstances affecting—Acceptance of devise. 129: 1061.  
 — Value of devisee. 129: 1061.  
 — Death of devisee. 129: 1062.  
 — Conveyance of devised land. 129: 1062.  
 Enforcement of liability—Sale of land. 129: 1063.  
 — Assumpsit or debt. 129: 1063.  
 — Limitation of actions. 129: 1064.  
 Liability of devisee for debts of ancestor. 112: 1017-1027.

#### WIND.

As proximate cause of loss by fire. See Fires, § 1.

#### WINDOWS.

In party-walls. See Party-walls, § 1.

#### WIRES.

Duty to guard and insulate electric wires. See Electricity, § 2.  
 In streets and across private property. See Telegraphs and Telephones, § 1.

#### WITHDRAWAL.

Of bid at auction sale. See Auctions and Auctioneers, § 6.  
 On insolvency of loan society. See Building and Loan Associations, § 1.  
 Of corporate assets. See Corporations, § 53.  
 Of juror in criminal case. See Criminal Law, § 54.  
 Of juror. See Jury, § 7.  
 Of juror and its effect in civil cases. See Trial, § 8.  
 Of option to purchase land. See Vendor and Purchaser, § 3.

#### WITHOUT RECOURSE.

Indorsement of commercial paper without recourse. See Bills and Notes, §§ 13, 14.

#### WITNESSES.

RIGHT OF COURT TO LIMIT NUMBER, § 1.  
 SUBPOENA, § 2.  
 SUBPOENA DUCES TECUM, § 3.  
 COMPETENCY—CHILDREN, § 4.  
 — INSANE PERSONS, § 5.  
 PRIVILEGED COMMUNICATIONS—BETWEEN ATTORNEY AND CLIENT, § 6.  
 — BETWEEN PHYSICIAN AND PATIENT, § 7.  
 — BETWEEN HUSBAND AND WIFE, § 8.

— HUSBAND AND WIFE AS WITNESSES FOR OR AGAINST EACH OTHER IN CRIMINAL CASES, § 9.

CROSS-EXAMINATION, § 10.

CROSS-EXAMINATION OF ACCUSED, § 11.

PRIVILEGE OF WITNESS, § 12.

— AS TO INCRIMINATING TESTIMONY, § 13.

EVIDENCE ADMISSIBLE TO IMPEACH, § 14.

— PROOF OF WANT OF CHASTITY, § 15.

Right of accused to confront witnesses. See Constitutional Law, § 13.

Validity of contracts to pay witnesses for testifying. See Contracts, § 9.

Compelling accused to submit to physical examination, stand in court, write or repeat words. See Criminal Law, § 37.

Power to compel production of books and papers. See Discovery, § 1.

Grand jurors as. See Grand Jury, § 1.

Slandorous statements by witnesses. See Libel and Slander, § 8.

Exemption from civil process. See Process, § 4.

Seizure of private books and papers. See Searches and Seizures, § 2.

Service of subpoena by telephone. See Telegraphs and Telephones, § 9.

To wills. See Wills, § 5.

To holographic wills. See Wills, § 9.

To nuncupative will. See Wills, § 10.

### § 1. Right of Court to Limit Number.

General rule that courts have the right. 116: 514.

Application of the rule. 116: 516.

Impeaching witnesses. 116: 518.

Expert witnesses. 116: 519.

### § 2. Subpoena.

Service of subpoena by reading it over the telephone. 127: 556.

### § 3. Subpoena Duces Tecum.

Authority to issue. 128: 756.

Application for, and issuance. 128: 759.

Necessity and grounds for issuance. 128: 761.

Form and requisites of writ. 128: 767.

Service and return. 128: 773.

Payment and tender of fees. 128: 773.

Compliance with writ. 128: 775.

— Public documents. 128: 776.

— Documents involving criminal charge. 128: 777.

— Papers affecting civil rights. 128: 777.

— Privileged communications. 128: 778.

Vacation of writ. 128: 779.

Operation and effect of writ. 128: 779.

### § 4. Competency—Children.

Ancient doctrine. 124: 296.

Modern doctrine. 124: 296.

General rule. 124: 297.

Variations. 124: 298.

Inability to define "oath." 124: 298.

Religious training as test. 124: 300.

Discretion of court. 124: 302.

Instructions by court or others when child appears incompetent. 124: 302.

Character of case as affecting competency. 124: 303.

Illustrations showing sufficiency of test of competency. 124: 304.

### § 5. — Insane Persons.

Competency in general. 128: 942.

Inquisition prima facie evidence of incompetency. 28: 943.

Mode of determining competency. 28: 943.

Credibility. 28: 943.

### § 6. Privileged Communications—Between Attorney and Client.

Employment of attorney. 66: 213.

Free consultation. 66: 215.

What communications are privileged. 66: 217, 232.

Communications which are not privileged. 66: 220.

— Made in presence of others. 66: 225.

— Made by testator at time of drawing will. 66: 229.

Communications having for their object the commission of crime. 66: 237.

Communications made before commission of crime. 66: 237.

Communications of fraudulent intent. 66: 238.

To whom privilege extends. 66: 240.

Attorney's right to testify to protect himself. 66: 241.

Waiver of privilege. 66: 241.

Duty and power of court. 66: 242.

### § 7. — Between Physician and Patient.

In general. 17: 565.

Effect of death of patient. 17: 569.

Waiver of privilege. 17: 569.



Who may waive privilege. 17: 560.  
In criminal cases. 17: 560.

**§ 8. — Between Husband and Wife.**

What communications are privileged. 29: 411.

— Illustrations. 29: 412, 413.

Communications in presence of third persons. 29: 413.

Communications heard by third persons. 29: 414.

Letters from husband to wife. 29: 414.

— Found in possession of third person. 29: 415.

Death or divorce does not destroy privilege. 29: 418.

Communications must be confidential. 29: 419.

Communications in capacity of agent. 29: 420.

Communications respecting trust property. 29: 423.

Time to raise question. 29: 423.

**§ 9. — Husband and Wife as Witnesses for or Against Each Other in Criminal Cases.**

In general. 106: 764.

Injuries to each other—Right to testify. 106: 765.

— Compelling testimony. 106: 766.

Crimes before marriage—General rule. 106: 767.

— Rape and abortion. 106: 767.

Incest. 106: 767.

Bigamy—Competency of lawful wife. 106: 768.

— Competency of bigamous wife. 106: 769.

Adultery. 106: 769.

Right of husband and wife to testify for or against each other. 14: 481.

**§ 10. Cross-examination.**

Extent of cross-examination as to collateral matters. 14: 480, 481.

**§ 11. Cross-examination of Accused.**

In general. 38: 895.

Testing credibility. 38: 896.

Privilege of witness. 38: 897.

Self-incrimination. 38: 897.

**§ 12. Privilege of Witness.**

Compelling accused to perform acts, exhibit himself or submit to physical examination. 94: 336-347.

**§ 13. — As to Incriminating Testimony.**

General rule. 75: 318.

Constitutional safeguards. 75: 320.

Penalties and forfeitures. 75: 322.

Disgrace. 75: 324.

What constitutes testifying against one's self. 75: 326.

Time to claim privilege. 75: 331.

Cross-examination. 75: 332.

Privilege is personal to the witness. 75: 339.

Who determines tendency of answer. 75: 340.

Loss of privilege. 75: 343.

**§ 14. Evidence Admissible to Impeach.**

In general. 82: 25.

Showing want of memory. 82: 25.

Proof of bad reputation for truth and veracity. 82: 26.

Proof of particular crimes. 82: 34.

Proof of prior contradictory statements. 82: 39.

Contradicting by previous testimony, depositions or writings. 82: 46.

— Verified pleadings, motions and the like. 82: 48.

— Letters and affidavits. 82: 49.

Collateral matters are not admissible. 82: 50.

Hostility or bias of witness. 82: 52.

Impeachment of own witness. 82: 57.

Rebuttal by evidence to sustain credibility. 82: 63.

**§ 15. — Proof of Want of Chastity.**

General grounds of impeachment. 53: 479.

Right to show want of chastity. 53: 480.

In prosecution for rape. 53: 482.

**WOODENWARE.**

As necessities of life. See Monopolies, § 1.

**WOODS AND FORESTS.**

Timber deeds. See Deeds, § 15.

Estovers. See Landlord and Tenant, § 33.

**§ 1. Cutting, Removing or Injuring Timber.**

Statutory penalties. 1: 496.

Construction of statutes. 1: 497.

Measure of damages in trespass or trover. 1: 497.

**WORDS AND PHRASES.**

Abandonment. 135: 890.

Abandonment of mining claim. 87: 403.

Accomplices. 138: 273.

Accord. 100: 420.

Account stated. 136: 39, 40; 134: 1021.

Accretion. 35: 307.

Additional bonds. 10: 860.

Additional servitude. 106: 239.

Ademption of legacies. 95: 343.

Admissions. 6: 242.

Affinity. 21: 797; 79: 200.

Affirmative easement. 136: 683.

Alimony. 102: 700.

Allonge. 79: 528.

Apex of mine. 58: 272.

Apparent easement. 136: 683.

Appropriation of water. 60: 802.

Appropriations. 22: 739.

Appurtenances. 81: 764.

Appurtenant easement. 136: 685.

Arbitrary tests. 25: 880.

Arson. 71: 266; 101: 22.

Assessment of corporate stock. 76: 126.

Assignment of lease. 10: 558.

Attempt to commit crime. 20: 741.

Auction. 131: 479.

Auctioneer. 131: 480.

Baggage. 99: 347.

Bailment. 136: 214, 215.

Balances, in pass-books. 134: 1021.

Banking business. 135: 60.

Before. 78: 386.

Betterments. 81: 164.

Bias. 9: 744.

Bigamy. 126: 201.

Boycott. 103: 489.

Breaking. 139: 1047.

Bribery. 116: 38.

Building and loan association. 61: 24.

Burden of proof. 135: 765.

Burglary. 2: 383.

Business of banking. 135: 60.

Certificate of acknowledgment. 108: 528.

Certificate of deposit. 75: 43.

Charitable uses and trusts. 63: 248.

Chattel mortgage. 137: 472.

Checks. 17: 807.

Circumstantial evidence. 97: 773.

Citizenship. 48: 711.

Civil death. 6: 380.

Cloud on title. 45: 373, 377, 378.

Cohabitation. 113: 273.

Collateral securities. 32: 711.

Color of title. 88: 702.

Conditional sale. 94: 210.

Condition precedent. 102: 366.

Condition subsequent. 70: 829; 79: 747.

Confession. 6: 242.

Confidence game. 134: 364.

Consolidation of corporations. 89: 607.

Conspiracy. 3: 475.

Conversion. 24: 795.

Covenant of seisin. 125: 443.

Crime. 78: 236.

Criminal contempt. 135: 272.

Crops. 131: 617.

Cruelty. 65: 69.

Curtesy. 128: 474; 112: 572.

Curtilage. 2: 388.

Damaged. 109: 905.

Demurrage. 30: 634.

Demonstrative legacy. 95: 368.

Descent. 12: 82.

Desertion. 138: 147; 119: 618.

Disputed claim. 100: 412.

Domicile. 48: 711.

Due process of law. 122: 904; 20: 554.

Duress. 94: 412.

Dwelling-house. 2: 388; 71: 266.

Dying declaration. 86: 638.

Easement. 136: 681.

Embezzlement. 87: 21.

End lines, of mining claim. 58: 267.

Equitable estoppel. 134: 172.

Equitable lien. 74: 387.

Equitable mortgage. 4: 696; 131: 914.

Equity of redemption. 55: 100.

Escrow. 130: 911.

Estate-tail. 7: 428.

Estovers. 106: 306.

Estray. 8: 272.

Executor de son tort. 98: 193.

Expectancy. 56: 339.

Ex post facto law. 37: 582.

Extortion. 116: 448.

False imprisonment. 67: 408; 118: 719.

False pretense. 25: 378.

Fellow-servants. 1: 31.

Filing. 15: 294.

Finder of lost goods. 129: 403.

Fire. 133: 1087.

- Fixtures. 105: 646.  
 Foreign judgment. 94: 533.  
 Forfeiture of mining claim. 87: 405.  
 Fornication. 139: 365.  
 Forthwith. 78: 386.  
 Franchises. 131: 862.  
 Gambling. 121: 694.  
 General law. 21: 780.  
 Gifts. 99: 891.  
 Goodwill. 96: 610; 95: 293.  
 Guaranty. 105: 502.  
 Guaranty of collection. 64: 393.  
 Head of family. 70: 107.  
 Heir. 12: 82.  
 Hereditary succession. 12: 82.  
 Highway. 57: 744, 745.  
 Holographic will. 104: 22.  
 House. 71: 266.  
 Idem sonans. 100: 322.  
 Ignorance and error. 55: 494.  
 Independent contractor. 76: 382.  
 Insane delusions. 63: 81.  
 Intervention. 123: 280.  
 Involuntary manslaughter. 90: 571.  
 Irreparable injury. 1: 374.  
 Joint will. 136: 593.  
 Judgment. 29: 82.  
 Judicial sale. 135: 918.  
 Kidnaping. 4: 447.  
 Kleptomania. 89: 386.  
 Laborer. 58: 303.  
 Laches. 2: 796.  
 Larceny. 88: 561.  
 Lateral support. 33: 446.  
 Lay days. 30: 639.  
 Legacy. 8: 720.  
 Letters intended to be conveyed by mail. 58: 603.  
 Liberty of the press. 15: 343.  
 Lightning. 133: 1093.  
 Living together. 113: 273.  
 Local actions. 22: 22.  
 Lost property. 129: 400.  
 Lottery. 16: 42; 103: 711-713.  
 Malice. 15: 337; 26: 150.  
 Mandamus. 98: 865.  
 Manslaughter. 134: 727; 95: 800.  
 Marginal purchase. 74: 470.  
 Marketable title. 132: 992.  
 Marriage brokerage contract. 104: 919.  
 Mayhem. 85: 771.  
 Mistake. 55: 494.  
 Monopoly. 74: 236.  
 More or less. 28: 631.  
 Mortgage. 7: 32.  
 Multi will. 136: 601.  
 Murder. 134: 727.  
 Mutual will. 136: 593.  
 Name. 132: 563.  
 Navigable. 19: 227.  
 Navigable waters. 126: 710.  
 Ne exeat. 118: 989.  
 Negative easement. 136: 683.  
 Night-time. 2: 388.  
 Nonapparent and noncontinuous easement. 136: 683.  
 Nontrading partnership. 48: 441.  
 Nuncupative will. 67: 572.  
 Office. 63: 181.  
 Olographic will. 104: 22.  
 Onerous title. 96: 916.  
 Partnership. 115: 401.  
 Party-walls. 89: 925.  
 Pass-book. 134: 1021.  
 Passenger. 61: 75.  
 Percolating water. 67: 669.  
 Personal liberty. 122: 904.  
 Policemen. 84: 680.  
 Police power. 53: 572; 78: 236; 104: 638.  
 Possibility. 56: 340.  
 Precatory trusts. 106: 500.  
 Preferred stock. 73: 227.  
 Privileged communication. 66: 217.  
 Prohibition. 111: 930.  
 Promoters. 17: 163.  
 Proximate cause. 36: 809.  
 Public office. 63: 181.  
 Public trial. 28: 308.  
 Public use. 102: 813.  
 Purchase on margin. 74: 470.  
 Purprestures. 69: 271.  
 Quasi easement. 136: 684.  
 Reasonable doubt. 48: 566.  
 Receivers. 71: 353; 72: 29.  
 Reciprocal will. 136: 593.  
 Reinsurance. 45: 442.  
 Republication of will. 76: 249.  
 Residence. 48: 711.  
 Robbery. 135: 474, 475.  
 Sale. 94: 209.  
 Satisfaction. 100: 452.  
 Scire facias. 122: 70.  
 Seal. 50: 156.  
 Secret process. 133: 760, 761.  
 Seduction. 8: 870-872; 76: 659.  
 Shares of stock. 57: 379.  
 Shore. 28: 631.  
 Side line of mining claim. 58: 267.  
 Sound health. 10: 244.  
 Sovereignty. 101: 158.  
 Special law. 21: 780.  
 Special legacy. 95: 343.  
 Speedy trial. 85: 188.  
 Strikes. 61: 706.  
 Subletting. 10: 558.  
 Subrogation. 44: 731; 99: 476.

Subscribing witness. 77: 640.

Supersedeas. 67: 714.

Suspenders. 67: 714.

Taking for public use. 16: 610.

Tax. 8: 506.

Telephone. 10: 128.

Trade secret. 133: 760.

Trade union. 68: 869.

Trover. 24: 795.

Trust in restraint of trade. 74: 236.

Trusts. 115: 774-776.

Undue influence. 31: 670.

Unlawful detainer. 120: 33.

Unlawful trusts. 74: 236.

Until. 78: 386.

Usury. 46: 179.

Vacant. 10: 390.

Vagrancy. 137: 944; 38: 643.

Vendor's lien. 137: 186; 83: 452.

Vice-principals. 75: 586.

Voluntary associations. 7: 160.

Voluntary conveyance. 14: 739.

Voluntary payment. 96: 81.

Wager. 37: 697.

Warehousemen. 136: 214, 215.

Waste. 14: 632.

Wills. 89: 486.

Within. 78: 386.

#### **WORDS LIBELOUS PER SE.**

See Libel and Slander, § 2.

#### **WORK AND LABOR.**

##### **§ 1. In General.**

Presumption that services rendered by relative are gratuitous. 133: 250.

Quantum meruit on substantial performance of building contract. 134: 693-696.

#### **WRECKS.**

Stealing from derelict may be declared a crime. See Criminal Law, § 1.

#### **WRITING.**

Necessary to constitute color of title. See Adverse Possession, § 9.

As evidence. See Evidence, § 17.

#### **WRIT OF ASSISTANCE.**

See Assistance, Writ of.

#### **WRIT OF AUDITA QUERELA.**

Nature, purpose and grounds of writ. See Audita Querela, § 1.

#### **WRIT OF NE EXEAT.**

See Ne Exeat, § 1.

#### **WRIT OF RESTITUTION.**

Execution of. See Ejectment, § 4.

#### **WRONGFUL ATTACHMENT.**

See Attachment, § 7.

#### **WRONGFULLY OBTAINED EVIDENCE.**

Admissibility of. See Evidence, § 8.

#### **X-RAY PHOTOGRAPHS.**

As evidence. See Evidence, § 23.

#### **YARDMASTER.**

As vice-principal. See Master and Servant, § 19.

#### **YEAR.**

What constitutes. See Time, § 1.

Agreements not to be performed within a year. See Frauds, Statute of, § 5.

#### **YOUTHFUL SERVANTS.**

Duty to warn and instruct. See Master and Servant, § 28.







3 6105 063 537 535

